18-91

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~328~~ 121

JAMES P. WILLETT AND ROBERT WILLETT, EXECUTORS OF V. WILLETT, DECEASED, AND W. E. CLARK, APPELLANTS,

vs.

JOHN FISTER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 8, 1872.

# SUPREME COURT OF THE UNITED STATES.

## No. 328.

JAMES P. WILLETT AND ROBERT WILLETT, EXECUTORS OF V. WILLETT, DECEASED, AND W. E. CLARK, APPELLANTS,

vs.

JOHN FISTER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.


| | Original. | Print. |
|---|---|---|
| Original bill of complaint | 1 | 1 |
| Summons to original bill of complaint | 3 | 2 |
| Answer of defendant Clarke | 4 | 3 |
| Answer of defendants Willetts, executors | 8 | 5 |
| Replication to answer of defendants, Willetts, executors | 19 | 10 |
| Deposition of Adeline Fister, for complainant, and exhibit | 21 | 10 |
| Martin Cady, for complainant | 43 | 23 |
| Patrick Cady, for complainant | 48 | 25 |
| Stephen Dorsey, for complainant | 49 | 25 |
| M. McDonald, for complainant | 51 | 26 |
| John Lyden, for complainant | 53 | 26 |
| Marian Clements, for complainant | 56 | 27 |
| Louisa Yeabower, for complainant | 59 | 28 |
| John Fister, for complainant | 67 | 30 |
| W. S. Cox, for complainant | 96 | 38 |
| Charles McNamee, for defendants | 99 | 39 |
| James F. Wollard, for defendants | 103 | 40 |
| William E. Clark, for defendants | 109 | 42 |
| Decree—special term—and appeal | 127 | 48 |
| Order of reference to special auditor and appeal | 128 | 49 |
| Report of special auditor | 130 | 50 |
| Proceedings general term | 135 | 52 |
| Bond of appeal to Supreme Court United States | 137 | 52 |
| Clerk's certificate | 138 | 53 |

1 *Original bill of complaint.—Filed Dec'r* 15, 1870.

In the supreme court of the District of Columbia, the day of , A. D. 1870.

| | | |
|---|---|---|
| JOHN FISTER, PLAINTIFF, *vs.* JAMES P. WILLETT AND ROBERT WILLETT, executors of the last will and testament of Voltaire Willett, deceased, and William E. Clark, surviving partner of the firm of V. Willett & Co., defendants. | In equity. | Bill. |

To the supreme court of the District of Columbia, holding an equity court for the said District.

The plaintiff complains as follows:

1. For a number of years past he has been engaged in business as a hog-butcher in the city of Washington, District of Columbia; and for a period extending from the 24th of September, 1863, to the 28th of February, 1866, he had extensive dealings with, and made large purchases of, Voltaire Willett, deceased, of whose last will and testament the defendants, James P. Willett, and Robert Willett are executors, and William E. Clark, the other defendant, doing business under the name and style of V. Willett & Co., in the city of Washington aforesaid, and extensively engaged in the purchase and sale of hogs.

2. On the 15th of June, 1866, the plaintiff was induced by the said V. Willett, deceased, and William E. Clark, to confess judgment to them for $6,226, which they alleged was the balance due them from the plaintiff; but plaintiff, who is an ignorant man, scarcely able to write his name, subsequently discovered that the said Willett & Clark had not given him credit for a payment of $1,500, made some months before the confession of judgment aforesaid, and for which payment plaintiff had and still has a receipt signed by the said Willett & Clark.

2 3. On the 29th of May, 1867, plaintiff conveyed to the said Voltaire Willett, since deceased, three certain lots, numbered 24, 25, and 26, in square numbered 37, in the city of Washington, District of Columbia, to be sold, and the proceeds applied to the payment of the judgment confessed as aforesaid; which lots have been sold to various parties, and the purchase-money paid to or to the use of the said Willett & Clark. On the 29th of May, 1867, plaintiff conveyed two lots to Martin and Patrick Cady, respectively, and the purchase-moneys arising from the sale thereof, or the notes given to secure the payment of the same, were paid to the said Willett & Clark, to be credited upon the judgment aforesaid.

4. Plaintiff is the owner of other real-estate in the city of Washington, and is desirous of selling the same, but cannot do so as long as the judgment aforesaid remains unsatisfied. He has, therefore, applied to the defendants for an account of the sales of lots aforesaid, with a view to a settlement; but in the account exhibited by defendants, they claim a balance greatly in excess of that which plaintiff conceives to be due. They charge the plaintiff interest on the original judgment from the date of its entry to the present time, but refuse to allow the plaintiff any deduction of interest on account of the credits entered, or which should have been entered, at different times, by reason of the sales of lots aforesaid; which credits plaintiff claims should have been applied

at the time they were made, first, to the payment of the accrued interest, and the balance in reduction of the principal sum.

Plaintiff therefore prays as follows:

1. That the judgment confessed as aforesaid may be set aside, in order that plaintiff may have the benefit of the $1,500 aforesaid.

2. That an account may be taken of what is due the defendants.

3. That, for the purposes aforesaid, all necessary accounts may be taken, inquir'es made, and directions given.

4. That the plaintiff may have such further or other relief in the premises as the nature of the case may require.

The defendants to the bill are James P. Willett and Robert Willett, executors of the last will and testament of Voltaire Willett, deceased, and William E. Clark, surviving partner of the firm of V. Willett & Co.

JOHN B. ADAMS,
*Solicitor for Plaintiff.*

I do solemnly swear that I have heard the bill by me subscribed, and know the contents thereof; and the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

JOHN FISTER.

Sworn and subscribed to before me this fifth day of December, A. D. 1870.

T. DRURY, [SEAL.]
*Justice of the Peace.*

3 *Summons to answer.—Issued December* 15, 1870.

In the supreme court of the District of Columbia, Dec'r 15, 1870.

JOHN FISTER, COMPLAINANT,
*against*
JAMES P. WILLETT ET AL., DEFENDANTS.
} 2215. Eq. dock., 10.

The President of the United States to James P. Willett & Robert Willett, executors, and William E. Clark, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness: D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDA.—That the def'ts are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

*Marshal's return.*

"Summoned all.
"Dec'r 15th, 1870.

"A. SHARP, *Marshal.*"

4 *Answer of defendant, W'm E. Clark.—Filed Jan.* , 1870.

In the supreme court of the district of Columbia, the day of January, 1871.

JOHN FISTER, PLANTIFF,
*vs.*
JAMES P. WILLETT ET AL., DEFENDANTS. } No. 2215. Eq. doc., 10.

The separate answer of William E. Clark to the bill of complaint of the above-named plaintiff:

In answer to the said bill of complaint I say as follows:

1. I admit that for a number of years past, the plaintiff has been engaged in business as a hog-butcher in the city of Washington, D. C.; and that during the years 1863, 1864, and 1865 he had extensive dealings with, and made large purchases of the late Voltaire Willett, deceased, and myself, who were doing business at that time under the name and style of V. Willett & Co., and were extensively engaged in the purchase and sale of hogs. Those dealings commenced prior to the 24th of September, 1863, but I do not remember whether they ended on the 28th of February, 1866, or not, yet I have no doubt that the facts are as in that behalf alleged in the said bill of complaint.

I admit that the defendants James P. Willett and Robert P. Willett are the executors of the last will and testament of the said Voltaire Willett, deceased.

2. I deny that, on the 15th of June, 1866, the plaintiff was induced by the said V. Willett, since deceased, and myself, to confess judgment for us for $6,226. As hereinafter stated, he did confess a judgment in our favor on that day, for a different amount, but it was done under the following circumstances: As stated above, plaintiff had been extensively engaged in the purchase of hogs aforesaid from the late V.
5 Willett and myself, and, on account of those purchases, he made various cash payments in different amounts, and at different times; and on the same account, and in addition to said cash payments, he made and passed to us his six several promissory notes; the first, for $110, dated 23d July, 1864; the second and third, for $1,000 each, dated November 12, 1864, and payable six and twelve months after date, with interest; the fourth and fifth, for $1,000 each, dated February 28, 1865, and payable in, respectively, six and twelve months after date, with interest; and the sixth, for $1,726.29, dated December 14, 1865, and payable four months after date, with interest. On the 15th of June, 1866, all of said notes being wholly unpaid, and in no way secured, we caused a suit to be entered upon them against the plaintiff. And thereupon, at the request of the plaintiff, a power of attorney was drawn by A. Thomas Bradley, esq., by which the plaintiff authorized and requested Walter S. Cox, esq., both of whom are attorneys of your honorable court, to confess the judgment for the amount of said notes; and, in accordance with said power, Mr Cox did confess judgment in open court for $8,000 damages, damages to be released upon the payment of $110, with interest from the 23d of July, 1864, and $2,000, with interest *for* the 12th of November, 1864, and $2,000, with interest from the 28th of February, 1865, and $1,726.29, with interest from the 14th of December, 1865, and costs of suit; all of which will more fully appear from the proceedings in said suit, which I pray leave to bring into court, and read as part of this my answer. The said power of attorney was signed

by the plaintiff personally. I positively deny that he was in the slightest degree induced by me, solely, or in connection with the said V. Willett, deceased, to confess said judgment; but, on the contrary, assert that it was done at his own (said Fister's) instance and request.

I deny that the late V. Willett and myself omitted to give the plaintiff credit for a payment of $1,500, made some months before the confession of the judgment aforesaid; and I deny that the plaintiff has a receipt, signed by the late V. Willett and myself, for $1,500, which we did not give him credit for in said judgment. It is possible that he has a receipt in his possession for $1,500, signed by the late V. Willett and myself, by our said firm-name; and if so, the plaintiff obtained it under the following circumstances:

6 There were two books in which the said payments made on account of the purchases aforesaid were credited. One was kept by the plaintiff, and the other by the late V. Willett and myself, or, more properly, by late V. Willett. Each time that the plaintiff made a payment, he brought his book, and the amount which he paid was written in it, and the date of payment, and the same entry was also made in the book kept by the late V. Willett and myself. On the 30th of October, 1865, the plaintiff came to the late V. Willett, since deceased, and myself, who were sitting in Mr. Willett's office, and handed Mr. Willett $1,500, which, the plaintiff said, were the proceeds of the sale of his stall, which he had just received; that it had just been paid him, and he brought it directly to us, without going home for his book. Mr. Willett entered the amount in our book, and gave the plaintiff a receipt for the same. Subsequently, on the 21st of November, 1865, about three weeks afterwards, we had a settlement with the plaintiff, and stated the account between us, and, on that day, entered on the plaintiff's book a credit for $1,500, and in that entry stated that it had been paid us on the 30th of October, 1865. And this was the only payment of $1,500 that the plaintiff ever made the said V. Willett and myself on account of the said dealings that I have any knowledge or information of, and this was the largest payment that he ever made us.

And in further answer to the said bill of complaint, I say that there is nothing in the said bill of complaint to show that the said judgment is one which your honorable court has any jurisdiction to affect, and I claim the same benefit as if I had specially plead to the jurisdiction of your honorable court or demurred to the said bill.

3. I deny that, on the 29th of May, 1867, the plaintiff conveyed to the late V. Willett lots Nos. 24, 25, and 26, in square No. 37, in the city of Washington, D. C., to be sold, and the proceeds applied to the payment of the judgment aforesaid, and that the said lots were sold to various parties, and the purchase-money paid to the use of the late V. Willett and myself.

I have been informed and believe that, on the 29th of May, 1867, the plaintiff and his wife did convey to the late V. Willett lots 24, 25, and 26, of the recorded subdivision of original lots 15, 16, and 17, of square 37, in said city; and that they were conveyed absolutely to Mr. Willett,

7 he having purchased them at an agreed price, and were not conveyed to him for the purpose of being resold and the proceeds applied to the payment of the judgment aforesaid.

I have also been informed and believe, but of my own personal knowledge do not know it, that, on the 29th of May, 1867, the plaintiff and his wife conveyed two lots to Martin and Patrick Cady.

And I have been further informed, and believe it to be true, and ex-

pect to prove, that the money which the plaintiff received from the late V. Willett for said sub-lots 24, 25, and 26, and that which he received from Martin and Patrick Cady for their said two lots, amounted, after deducting expenses of conveyancing, &c., to $2,691, and the same was paid to the late V. Willett on account of the said judgment, and the same was credited by the late V. Willett on the said judgment on the 7th of June, 1867. It will appear, from the proceedings in the said suit, that that amo unt was credited on the said judgment on that day; but whether it was the proceeds of the sale of those lots I do not know. Our account with the plaintiff was kept principally by the late V. Willett, and nearly all of the payments made by the plaintiff were made to him, and for that reason I am not as familiar with the details of the said transactions as the late V. Willett was.

4. I do not know, and cannot set forth, whether the plaintiff is the owner of other real estate in said city, but have been informed and believe he is. I deny that the plaintiff ever applied to me for an account of the sale of the lots as aforesaid. I deny that I ever claimed anything in excess of the amount actually due on said judgment. I admit that we demanded interest on said judgment from times named in the judgment. I deny that I refused to allow interest on the credits on said judgment.

WILLIAM E. CLARK.

REGINALD FENDALL, *Solicitor.*

I do solemnly swear that I have read the answer by me subscribed, and know the contents thereof, and that the facts therein upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

WILLIAM E. CLARK.

Sworn to and subscribed before me this 12th day of January, A. D. 1871.

[L. S.] E. J. KLOPFER, *J. P.*

8 *Answer of James P. and Robert Willett, executors.—Filed Jan'y* 25, 1871.

In the supreme court of the District of Columbia.

JOHN FISTER *vs.* WILLIAM E. CLARK ET AL. } No. 2215. Eq. dock., 10.

Joint and separate answer of James P. Willett and Robert Willett, executors of the last will and testament of Voltaire Willett, deceased.

1. These def'ts admit the allegations of the 1st paragraph of the pl't's bill of complaint.

2. These def'ts have no personal knowledge of the allegations of the 2d paragraph of the said bill, and can only answer the same from information which they have obtained from others and from the books and papers of the late Voltaire Willett, deceased, which have come into their possession as his executors. They believe that information to be true, and upon it they answer as follows:

9 The pl't'ff, who is a butcher, made large purchases of hogs from the def't Clark and the late V. Willett, since deceased, who were

doing business under the firm-name of V. Willett & Co., for a portion of which purchases the pl't'ff paid them in cash, and for the balance actually due gave them his notes. And on the 15th June, 1866, there were due and wholly unpaid six of those notes, amounting to $5,826 $\frac{29}{100}$, and interest, and on that day the said V. Willett & Co. entered suit upon said six notes against the pl't'ff, and on the same day the pl't'ff, through his attorney, Walter S. Cox., esq., confessed judg't in open court for the amount of the notes, and interest. The said notes are among the proceedings in said suit, which said proceedings these def'ts pray leave to bring into court for reference, and to read as part hereof. This is the only judg't that the pl't'ff confessed in favor of the said V. Willett & Co. that these def'ts have any knowledge or information of. And they have been informed that the pl't'ff never confessed a judg't for $6,226.00, as stated in the said bill, and upon that information they deny that he ever did. The pl't'ff was not induced to
10 confess the said judgment for $5,826.29 and interest by the said V. Willett & Co., but the same was done of his, said pl't'ff's, own volition, at his own request. The last of said six notes, to wit, the one dated Dec. 14, 1865, for $1,726 $\frac{29}{100}$, payable 4 mo's after date, with interest, was given to the said V. Willett & Co. by the pl't'ff in payment of the balance found due on the said V. Willett & Co. by the pl't'ff (in addition to the first five of said six notes) upon account in writing, which the said V. Willett & Co. and the pl't'ff did make up, state, and settle on the said 14th day of Dec., 1865, of all sums of money which the said V. Willett & Co. had, before that time, by the order and direction, and for the use of the said pl't'ff, received on account of and of all matters and things relating to the said dealings between the said V. Willett & Co., and the said pl't'ff, up to and including the said 14th day of Dec., 1865, a counterpart of which said statement was then delivered to the pl't'ff, and the same is now in his possession. And to so much and to such part of the said plaintiff's bill of complaint as seeks an ac-
11 count of and concerning the said dealings, at any time before the said 14th day of Dec., 1865, these def'ts plead the said stated account in bar.

And these def'ts, further answering, upon their said information and belief, deny that the said Willett and Clark did not give the pl't'ff credit for a payment of $1,500 in said judgment made some months before the confession of the judg't aforesaid; and deny that the pl't'ff has a receipt for $1,500, for which he has not already received credit; but, on the contrary, aver and say that at the time said judg't was entered, the same was entered for the amount due by the pl't'ff to V. Willett & Co., and for no more, and that all the credits to which the pl't'ff was entitled were allowed to him; and that the pl't'ff at that time well understood the same, and was perfectly satisfied with said settlement.

And these def'ts, further answering, say that there is nothing in the said bill of complaint to show that the judg't, which the said pl't'ff seeks to have set aside, is a judg't which your hon. court has any juris-
12 diction over, and they claim the same benefit as if they had specially plead to the jurisdiction of your hon. court or demurred to the said bill.

3. These def'ts have no personal knowledge of the truth or falsity of the allegations of the 3d paragraph of the said plaintiff's bill of complaint, and can only answer the same from information which they have obtained from others, and from the books and papers of the late V. Willett which have come into the hands of these def'ts as his executors. These def'ts believe that information to be true, and upon it they answer as follows:

In the month of April, 1867, the pl't'ff was the owner of certain real estate in the said city of Washington, including original lots No. 15, 16, and 17, in sq. 37. For the purpose of raising money to pay the said judg't, he caused Messrs. Green & Williams, auctioneers, of said city, to offer said three lots at public auction on the 23d day of April, 1867, limiting the price at 20 cents per square foot. Each of said lots had a front of upwards of fifty feet, and, for the purpose of making a more
13 advantageous sale, they were subdivided into five lots, numbered respectively 23, 24, 25, 26, and 27, which said subdivision was shortly afterwards, to wit, May 27, 1867, recorded in the office of the surveyor of said city, and these defendants herewith file a duly authenticated copy of the same for reference, and pray leave to make it a part of this their answer.

At said auction-sale Martin Cady became the purchaser of said sub-lot No. 23, which is the corner lot, and the most valuable of the five, for 28 cents per square foot; and Patrick Cady became the purchaser of said sub-lot No. 27, for 20 cents per square foot. For the other three of said sub-lots there was no bid as high as the limit, viz, 20 cents per square foot, and, consequently, no sale of the same was then made. About a month after said sale, to wit, May 29, 1867, the having failed to find a purchaser for said sub-lots 24, 25, & 26, induced the said V. Willett to buy the same at the price limited; and the said
14 V. Willett, after refusing to buy them several times, finally consented to take them at the price limited, and did take them at that price. This sale was considered more advantageous than the sale to Martin and Patrick Cady aforesaid, because the latter purchased upon the terms of one-third cash and the balance in six and twelve months, as will appear from a correct copy of the advertisement of said sale, herewith filed, marked Ex. B, and prayed to be taken as part hereof; and the sale to the said V. Willett were upon the terms of all cash. The said sub-lots 24, 25, 26, & 27 were of the same value per square foot.

By virtue of these sales, the pl't and his wife, on the 29 of May, 1867, conveyed said sub-lots No. 23 to Martin Cady, by deed duly recorded among the land-records of Washington County, in the district aforesaid, in Liber E. C. E. 26, folio 361; and on the same day conveyed to Patrick Cady said sub-lot 27, by deed recorded among the land-
15 records aforesaid, in Liber E. C. E. 16, fol. 280; and on the same day conveyed to the said V. Willett said sub-lots 24, 25, and 26, by deed recorded among the land records aforesaid, in Liber E. C. E. 9, fol. 168, as will more fully appear on reference to said recorded deeds, which the pl't prayes leave to bring into court and read as part hereof.

The purchase-money of the said two lots to Martin and Patrick Cady amounted to $1,318.16, and the purchase-money of the other three lots to V. Willett to $1,549.80; in all, $2,867.96. Of this there was paid the said auctioneers for their services $43.32; for deeds and stamps, $12.00; and for taxes, surveys, and subdivision, $121.64; in all, $176.96, which, deducted from the said $2,867.96, left $2,691.00. And on the 7th of June, 1867, this last amount was, at the instance of said Fister, credited by the said V. Willett on the said judg't.

On the 7th of Nov., 1867, the pl't paid the said V. Willett $421.00, which was credited on the said judg't by the said V. Willett on the 10th of June, 1868.

16 So that, to the best of the knowledge, information, and belief of these def'ts, said judg't and interest, subject to a credit of $2,691.00 on the 7th of June, 1867, and a credit of $421.00 on the 7th of Nov., 1867, is still due and unpaid.

These def'ts, upon said information and belief, deny that the pl't, on the 29th of May, 1867, conveyed to V. Willett, dec'd, lots 24, 25, and 26, in sq. 37, to be sold, and proceeds applied to the payment of the said judgment; and, on the 'ontrary, aver and say that there are no lots in that square of those numbers, except the sub-lots which the pl't and his wife on that day conveyed as aforesaid.

4. These def'ts have been informed and believe that the pl't is the owner of other real estate in said city. They admit that the pl't has applied to them for an account of said sales.

They do not know what sum the pl't conceives to be due, for
17 he has lately (through his attorney) claimed different am'ts on different occasions; but these def'ts positively assert that they have never claimed anything in excess of the amount actually due, as above stated; and they have always been ready and willing and offered the pl't to allow interest on said two credits from the time of their payments, respectively.

JAMES P. WILLETT AND
ROBERT WILLETT.

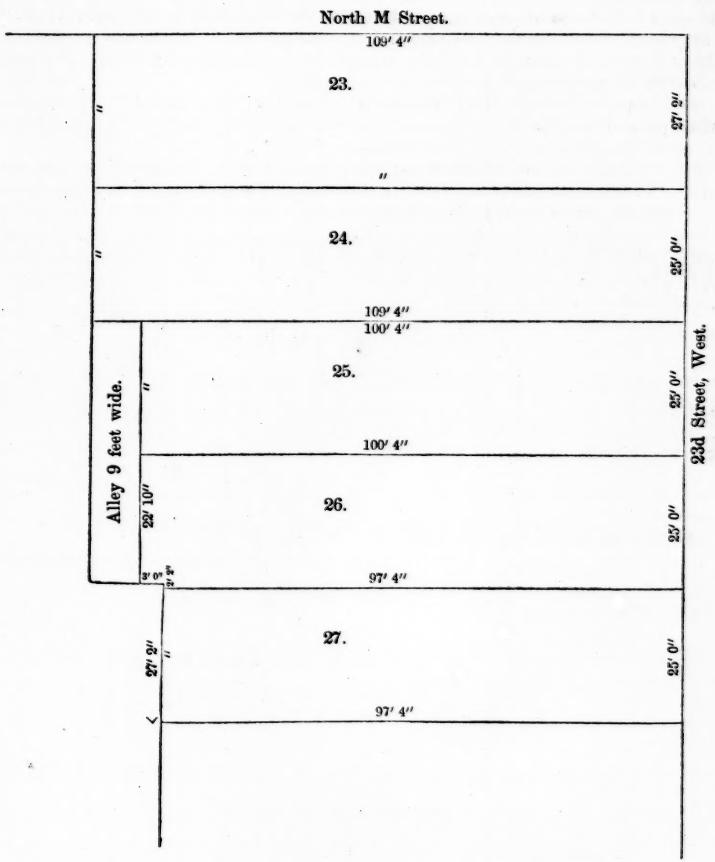
We solemnly swear that we have read the answer by *me* subscribed, and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and that the facts therein stated upon information and belief we believe to be true.

JAMES P. WILLETT AND
ROBERT WILLETT.

Sworn to before me this 24th day of January, A. D. 1871.

E. J. KLOPPER, *J. P.*

18




SURVEYOR'S OFFICE, CITY HALL,
*Washington, D. C., January 25th*, 1871.

**The above subdivision of original lots No. 15, 16, and 17, in square No. 37 was recorded in this office in liber R. W., (No. 1,) folio 14, on the 27th day of May, 1867.**

P. H. DONEGAN,
*City Surveyor.*
Pr. D. DONORAN.

19 *Replication.—Filed Jan.* 30, 1871.

In the supreme court of the district of Columbia, the 28th day of January, A. D. 1871.

JOHN FISTER
*vs.* } 2215. Equity docket, 10.
CLARKE ET AL.

The replication of John Fister to the answers of Clarke, and James P. Willett and Robert Willett, executors of the last will and testament of Voltaire Willett, dec'd.

The plaintiff, reserving to himself all manner of exceptions to the insufficiency of the said answers, for replication thereto saith that he avers the said bill to be true, certain, and sufficient in law to be answered unto, and that the answers of the said defendants are uncertain, untrue, and insufficient to be replied to by this plaintiff. Without this, that any other matter or whatsoever in the said answers contained
20 material or effectual in law to be replied to, confessed, and avoided, traversed or denied . All which matters and things this plaintiff is and will be ready to aver and prove as the court shall direct, and prays as in and by his said bill he hath already prayed.

JOHN B. ADAMS,
*Sol. for pl'ff.*

*Agreement to place cause on calendar.—Filed Mar.* 6, 1871.

JOHN FISTER
*vs.* } 2215. Equity.
JAMES P. WILLETT ET AL.

We agree that this case may go on the March term, 1871 calendar, and the clerk will please put it there.

J. B. ADAMS,
*Att'y for pl'ff.*
REG. FENDALL,
*Att'y for def'ts.*

21 *Testimony for complainant.*

JOHN FISTER
*vs.* } 2215. Eq. dock. 11
JAMES P. WILLET EX'R ET AL.

Deposition of ADELINE FISTER, who, being duly sworn, deposes and says:

(Mr. Fendall objects to the witness testifying, on the ground that she is not a competent witness.)

I reside in the 1st ward in this city. I am the wife of John Fister, the complainant; and am 54 years of age. I was well acquainted with Voltaire Willett, in his lifetime. I was acquainted with him, I suppose, some 20 or 24 years. I could not say positively. I am also acquainted with William E. Clark.

1. Q. What do you know of your husband having any business with Willett & Clark, as a firm?

A. I know that he dealt with them. Their business was selling
22 hogs. My husband was a butcher, and had a stand in the market. I, also, stood in the market with my husband. I attended to the principal part of my husband's business in market; received and paid out money for him. I was acquainted with all the business transactions between my husband and Mr. Willett and Mr. Clark. I chiefly made the payments. Those payments were chiefly made for hogs. Mr. Willett always came after his money on Sunday, and I counted it out to him, or saw that he got it. I was, in fact, the banker of my husband. I had very little dealings with Mr. Clark. Mr. Clark only came when Mr. Willett was sick or out of the city.

2. Q. When did you commence to deal with the firm of Willett & Clark?

A. Mr. Willett went away during the war, and we then dealt with Mr. Homiller. Mr. Willett came back, and we resumed our dealings with him in October, 1863, I think.

3. Q. Who kept the accounts between you?

23 A. Mr. Willett. He kept the books altogether. We never had the scratch of a pen only from the hands of Mr. Willett and Mr. Clark. The last dealings we had with Mr. Willett, before he went away, was the 30th of May, 1863. We commenced to deal with him again, I think, in October, 1863. I think Clark was still in the firm. We continued to deal with the firm until Mr. Willett drew out, which was, I think, in 1866. My husband dealt with Mr. Clark for a while afterwards. I always paid the money until about the last of the business, when Mr. Willett, ceasing to come to the house, my husband used to take the money to him. There never was a mistake, or anything of the kind made when I paid the money.

4. Q. Have you any knowledge of the balance due at the time you closed up? Were you present at any settlement between your husband and Mr. Willett.

A. No, sir; they transacted all that business at Mr. Willett's.

5. Q. You did owe a balance?

24 A. Yes, sir; but I never thought it was as great as it is?

6. Q. Do you remember when Willett and Clark stopped business as partners?

A. In January, 1866, I think.

7. Q. Have you knowledge of any judgment being confessed by your husband in favor of Willett and Clark?

Answer. I have this kind of knowledge; one day my husband started out, saying he was going down to have some kind of a settlement with Mr. Willett.

(Objected to.)

That is all the knowledge I had until my son-in-law went down and found out about it.

8. Q. Did you see and have any conversation with Mr. Willett after this supposed settlement?

A. Yes, sir.

9. Q. What do you know about your husband conveying to Mr. Willett some lots of ground on 23d street, near "M?"

25 A. All I know about it is, that my husband told him to take the lots; and I also told him to take the lots, sell them, to get as much out of them as he could, and to apply the proceeds to the judgment, or rather the balance that my husband owed him.

10. Q. Do you remember of executing any deeds about the time of that conversation or afterwards?

A. Yes, sir.

11. Q. Just state to whom you executed those deeds.

A. Mr. McNamee and Mr. Willett came up in a buggy, I think, and I sent for Martin and Patrick Cady, and their wives. I forget what time that was. They came, and then Mr. McNamee commenced unrolling some papers on my center-table.

(Objected to.)

He said to me, "I want you to put your name here." I did so, to whichever deed came first. I think it was Martin Cady's deed. He said, "I suppose you understand the transaction of these deeds?" Said I, "We have sold the ground to these gentlemen." He replied,
26 "Yes." Said I, "Then I understand them." He said "Put your name here." I said, "I cannot write." "Then just touch the pen," he said. I did so. The same thing was gone through with Patrick Cady's deed. They then went to signing the deeds of trust.

12. Q. Do you know which lots they were in that piece of ground that you had authorized Mr. Willett to sell?

(Objected to.)

A. Martin's, I think, was the corner lot, and the other, the last lot down. I do not remember the number of it. The deeds were executed to them.

13. Q. Was there any money paid at that time?

A. Yes, sir; Martin Cady and Patrick Cady paid some money down, but I cannot tell how much. The money they paid was handed over to Mr. Willett. After this transaction, I turned to go out, when Mr. McNamee called to me, and said, "Stop, madame, I have not done
27 with you yet." Said I, "What is it?" He replied, "There is another one I want you to sign. Mr. Willett was still there. He then remarked, "I suppose you know what it is?" Said I, "It is a deed." "Yes," he said. I then put my name to it.

14. Q. Was the deed read to you at all?

(Objected to.)

A. No, sir.

15. Q. Was it explained to you?

(Objected to.)

A. No, sir; none of them were read to me or my husband. There was nothing said after the execution of these deeds. I do not know as I passed two words with Mr. Willett during the whole time.

16. Q. What was to be done with the proceeds arising from the sale of the lots which you and your husband agreed to convey to Mr. Willett?

(Objected to.)

Answer. Those lots were turned over to Mr. Willett to sell, and to make just all he could out of them and to put the proceeds to the payment of the debt.

28 17. Q. After you signed the deed for that ground, do you know whether he disposed of those lots or any of them?

A. I never heard a word. I did not know, when he was measuring off those lots, what he was doing. I saw him measuring with a tape-line, and I said, "I wonder what Mr. Willett is doing?" I got some of the children to go and get Mr. Willett to come to the house. This was some time after I executed the deed. I said "What are you doing over there?" He says, "The damn' Irish have got to disputing about three feet or three inches, I cannot say which, and I am running it off to stop the dispute." He didn't communicate to me then that he had sold the lots.

18. Q. Did Mr. Willett ever afterwards inform you that he had sold that ground?

(Objected to.)

A. No, sir; I never could get any satisfaction out of him about anything. All I got from him was by chance.

19. Q. At the time he got you to execute these deeds, did he make any explanation to you?

29 A. No, sir.

20. Q. Did Mr. McNamee read the deed to you or to your husband?

A. No, sir; my husband was present, standing in the front door, near Mr. Willett. It was all in the same parlor. He and all of them were standing around at the time I signed the deeds.

21. Q. Did Mr. Willett ever inform you how much he got for these lots, or how sold, or upon what terms?

A. No, sir; he always cut me up pretty harshly.

22. Q. Do you remember of paying Mr. Willett any money in the absence of your husband?

A. Yes, sir; I paid him $421.

23. Q. For what purpose did you pay him that?

A. I understood my property was to be sold for taxes. I therefore sold a piece of ground for $421 cash, and went to Mr. Willett, told him I understood my property was to be sold for taxes, and that I wished him to take that $421, settle up my taxes, and what was left to apply to the judgment.

30 24. Q. Did he pay your taxes with it?

A. I was under the belief that my taxes were paid until last winter when I went to pay my yearly taxes, when I found he had failed to pay the taxes, but had had the property sold and bought it in.

(Objected to.)

25. Q. And the sale marked to his use.

A. Yes, sir.

26. Q. Do you remember of paying any other money to Mr. Willett after that settlement?

A. No, sir; only what was got from those lots.

27. Q. Did you have a book-account between Mr. Willett, your husband, and yourself?

A. I had a book in which Mr. Willett made the entries.

(An account-book was here handed the witness, and identified as one containing a part of the accounts between them. Book marked thus "X.")

28. Q. Look at this (handing witness small account-book) and
31 state whether it contains an account between Willett & Clark and your husband.

A. This is one of the books, and contains the account up to the time we commenced dealing with him.

(Account-book made a part hereof and marked Ex. "B.")

29. Q. I understand you to say that you disremember the exact time that there was a settlement between your husband and Mr. Clark and Willett.

A. I do not remember the exact time. It was some time in June or July, 1866, I think, when my husband went down to settle with him.

30. Q. Had you a receipt of Mr. Willett's at that time in your possession?

(Objected to.)

A. I had a small piece of paper that I got in April, 1865.

31. Q. From whom did you get it?

A. I got it out of my husband's pocket. When I got it out of his pocket, not being able to read writing, I called one of my daugh-
32 ters, and asked her to read it and tell me what it was. Mrs. Maria Clements was the daughter I called. After she read it, I carelessly threw it in the drawer, and didn't think anything more about it for some time. I looked at it again afterwards, and put it in an old book which Mr. Willett had laid aside, and did not take it out again until a year subsequent. I, some time afterwards, spoke to Mr. W'm Fendall about it, but did not show it to him. He said he did not want to see it, but told me to take care of it. This was at my house. It must have been in 1867.

32. Q. About a year after this settlement.

A. Yes, sir.

33. Q. Now look at this paper (handing witness paper) and state if you can identify it as the receipt you had in April, 1865.

A. Yes, sir.

34. Q. Had you called your husband's attention to it prior to this settlement?

33 A. No, sir. I was not aware I had it. It has remained in my possession ever since I found it.

35. Q. Did Mr. Willett ever state to you exactly what the state of his account with your husband was?

A. No, sir.

36. Q. Did he ever disclose to you what this ground brought?

A. No, sir.

37. Q. Did you pay him any other money for your husband than what have related?

A. No, sir.

Cross-examination by Mr. Fendall:

38. Q. You paid Mr. Willett no further money than what?

A. I paid Mr. Willett no money after we stopped dealing, except the $421 and what was paid for the ground.

39. Q. Did you pay Mr. Willett any money; and, if so, how much prior to the settlement on account of dealings between you and your husband?

34 A. I do not know. I could not well tell in a period of 24 years.

40. Q. When was it that you paid Mr. Willett this $421?

A. I think it was in 1868.

Q. Are you positive that it was not in November, 1867?

A. I would not be positive, but I know my property was for sale, and I know I gave him this money to pay up. That is all I know about it. It was in the summer, and about the time my property was to be sold.

42. Q. Could it have been on the 7th of November, 1868?

A. I suppose it was in 1868, but I would not say what month it was. I did not keep any record.

43. Q. Do you know whether Mr. Willett ever credited that amount on the judgment against your husband?

A. No, sir, I do not.

44. Q. Do you know whether he ever credited in the amount on the judgment against your husband?

35 A. No, sir, I do not.

45. Q. How do you know Mr. Willett or Clark dissolved partnership in January, 1866?

A. Only as far as my recollection serves me.

46. Q. What is your knowledge on that subject?

A. My knowledge on that subject is that my husband commenced dealing with Clark after Mr. Willett drew out of the firm. It was in 1866, but whether in January or March, 1866, I cannot say.

47. Q. How much a foot was Martin Cady to give for that corner lot?

A. It was sold under the bell. He gave 28 cents a foot.

48. Q. I understood you to say that Patrick Cady bought the lot furthest from the corner?

A. Yes, sir. He paid 20 cents.

49. Q. It was the money which Martin and Patrick Cady paid for those two lots that was paid to Mr. Willett in McNamee's presence?

A. Yes, sir.

50. Q. How long before the signing of those deeds was it that the property was sold?

36 A. I think it was sold either the last of April or 1st of May.

51. Q. Did you, or did your husband to your knowledge, ever endeavor to get purchasers for those lots between those two which were bought by the two Cadys?

A. No, sir, I did not, and my husband did not to my knowledge.

52. Q. Did you, or your husband to your knowledge, ever ask Mr. Willett to buy those lots at the same price as that for which Patrick Cady gave for his?

A. No, sir.

53. Q. How do you know that the deed of Mr. Willett for those lots was never read to your husband?

A. It was not read in my presence.

54. Q. Do you know whether your husband ever saw those deeds before they were brought up there on that day?

A. I know he did not know anything previously about them, because I know he had not been in Mr. Willett's presence. He always told me when he had been there.

37 55. Q. Did you go with him whenever he went out?

A. No, sir.

56. Q. May he not have seen those deeds on some of those occasions when he went out and you did not go with him?

A. That you will have to find out from him.

57. Q. How long before the final settlement was it that you first saw the receipt?

A. I cannot say when the settlement was had. I got that receipt in April, 1865. I know it was then, because I was cleaning some shad and wanted some change, and I went up to where his jacket was hanging on the side-board and run my hand down one of his pockets to see if there was any money in it. I pulled out this paper and I looked at it. It looked to me to be pencil-marks. I put my spectacles on and found it was in ink. I then made it out the best I could. I saw it was for something, and that it was in Mr. Willett's handwriting. I then called in my daughter Maria, and she read it. I cannot read writing, but I can make out a little of anything that is to be made out.

38 58. Q. How long after you first found this receipt was it before you showed it to your husband?

A. I never showed it to him. He never saw it.

59. Q. Why did you not show it to him?

A. I did not think it was anything of any account. I merely laid it aside. I did not know exactly what it was for.

60. Q. How long before the death of Mr. Willett was it that you found it?

A. Mr. Willett died in 1869, and I found that in 1865.

61. Q. At the time your husband went down to have this settlement with Mr. Willett, did you then call his attention to it?

A. No, sir; for I did not know he was to have any settlement until he came back.

62. Q. When he came back did you call his attention to it?

A. No, sir.

63. Q. When you found out that he had settled with Mr. Willett why was it you did not call his attention to this receipt?

39 A. Because I was so worried I did not know what to get at. I run from one lawyer to another to see what could be done. Among others I saw Judge Dunlop. I told him of the receipt, but did not show it to him. I had often sent Mr. Willett a roll of money of $1,500 & $2,000 at a time The way did'nt have it on the books is this: This $1,500 or $2,000 was in payment, perhaps, of two and three lots of hogs, and I got credit on the books for each lot of hogs separately. The whole amount was not put down in the books by itself.

64. Q. Did you ever pay him as much as $2,000 in one day?

A. I don't know as I paid him $2,000, but I know I paid him $1,700 in one day, and I paid large amounts at other times. I remember that, either in Jan. or Feb., 1865, I sent him $1,500. My husband was going down, and having worried me a great deal about the book, not being able to find it, I said, "I wish to Heaven you and Mr. Willett would settle your business together and not trouble me." I wrapped up

40 one roll of $600 with red string, and I took a piece of flannel and tied up another bundle of $900 with it. He put the $600 into his side pocket, and the other bundle of $900 into his pantaloons pocket.

65. Q. When you made these different payments did he always credit them in the book?

A. Yes, sir.

66. Q. Would the amount of credits all be put down as having been paid that day?

A. I suppose so; I do not know. He would credit me for every lot of hogs separately.

67. Q. When was the last payment he made, and which he credited in this book?

A. The last payment I made him was about the 30th of May, 1865, either in March or May, and then I gave up having any dealings with him.

68. Q. Who made the payment after March or May, 1865?

A. The old gentleman, except this $421 and the money that the lots brought.

69. Q. When you first saw that receipt was it the same as it is now?

41 A. Just the same.

70. Q. Do you know who tore the end off that receipt?

A. Nobody, as I know of. It was just exactly as it is now. What called my attention particularly to it was the fact that there was no date to it.

71. Q. You paid Mr. Willett nearly all the payments prior to March, 1865?

A. Yes, sir.

72. Q. Then you must have paid him the money for which this receipt was given, if this was dated April, 1865?

A. I cannot say for what that receipt was given. It might have been given for the $1,500, or it might not, that I sent my husband with. I can only swear as to the time when I got the receipt.

73. Q. Prior to March or May, 1865, did your husband, to your knowledge, ever pay Mr. Willett any sum of money which was not credited by Mr. Willett at the time in the book?

42 A. I do not know anything about that. He never got any money from me to pay Mr. Willett after 1865.

74. Q. I see in this book, (Ex. "B,") on the 21st of November, 1865, *in this book* there is a credit of $1,500 as paid on the 30th of October.

A. I do not know anything about that. He did not get the money from me. That is the money he got from his (Mr. Fister's) sister, Mrs. Yeabower.

75. Q. For what was that money paid him?

A. I do not know.

76. Q. Did your husband on or about the 30th of October, 1865, sell his stall in market?

A. He did. I do not know how much. He sold it to John A. Sterrell.

77. Q. What relation is Mrs. Yeabower to you?

A. My husband's sister.

78. Q. To whom did he sell it?

A. John A. Stepper.

her
ADELINE + FISTER.
mark.

Witness:
JAS. O. CLEPHANE.

Sworn and subscribed before me this 5th day of February, A. D. 1871
JAS. O. CLEPHANE,
*Examiner.*

*Exhibit B to Adeline Fister's testimony for plaintiff.*

[Consisting of ac. on 16 pages, to be inserted in record between pages 42 & 43.]

*John Fister in acc't with V. Willet & Co.*

DR.

| 1863. | | | | | |
|---|---|---|---|---|---|
| Sept. | 24. | To cash paid taxes for 1863 | | | 55 16 |
| Oct. | 1. | " 27 hogs | 5,430, | 4,344 @ 7½ | 325 80 |
| | 5. | " 2 half bbls. sausage-skins, | | a 36 | 72 00 |
| | 6. | " 20 hogs, | 3,840, | 3,072 " 8⅛ | 249 60 |
| | " | " 10 do. | 2,100, | 1,680 " 7¼ | 121 80 |
| | 12. | " 32 do. | 6,355, | 5,080 " 8 | 406 72 |
| | 16. | " 20 do. | 4,615, | 3,692 " 8⅛ | 299 97 |
| | " | " 15 do. | 2,425, | 1,819 " 7½ | 136 42 |
| | 22. | " 30 do. | 5,930, | 4,744 " 7⅜ | 343 94 |
| | 28. | " 39 do. | 7,660, | 6,128 " 6⅞ | 421 30 |
| Nov. | 5. | " 36 do. | 8,350, | 6,680 " " | 443 05 |
| | 11. | " 40 do. | 7,650, | 6,120 " 7⅜ | 451 35 |
| | 16. | " bbl. sausage-skins | | | 36 00 |
| | 19. | " 24 hogs, | 5,265, | 4,212 " 7¾ | 326 43 |
| | 23. | " 30 do. | 6,100, | 4,880 " 8¼ | 402 60 |
| Dec. | 1. | " 10 do. | 2,180, | 1,744 " 8⅜ | 146 06 |
| | " | " 31 do. | 4,660, | 3,728 " 8¼ | 307 56 |
| | 8. | " 34 do. | 7,200, | 5,760 " 8⅜ | 482 40 |
| | 10. | " 20 head hogs, | 2,615 | " 8⅛ | 212 47 |
| | 16. | " 32 hogs, | 6,435, | 5,748 " 8⅜ | 431 15 |
| | | | | | 5,671 78 |

*John Fister in ac. with V. Willett & Co.*

CR.

| | | | |
|---|---|---|---|
| 1863. | | | |
| Oct. | 20. | By cash p'd Clark | 55 16 |
| | 20. | " cash " " | 325 80 |
| J'n'y | 8. | " am't over | 72 00 |
| | 20. | " cash " Clark | 249 60 |
| | 20. | " cash " " | 121 80 |
| | 20. | " cash, 2.80; 28, cash, 403.92 | 406 72 |
| | 28. | " cash, 223.08; 10 Nov., do., 76.89 | 299 99 |
| Nov. | 10. | " cash | 136 42 |
| | 11. | " cash | 343 94 |
| | 11. | " cash | 421 30 |
| | 11. | " cash, 43; 19. cash, 400$ | 441 05 |
| | 19. | " cash, 190$; 29, p'd Clark, 261.35 | 451 35 |
| J'n'y | 8. | " am't over | 36 00 |
| | 29. | " cash p'd Clark | 326 43 |
| | 29. | " cash, Clark, 67.22; 13, do., 335.28 | 402 60 |
| Dec. | 13. | " cash | 146 06 |
| " | " | " cash | 307 56 |
| " | " | " cash, 143.40; 8 J'n'y, do., 339 | 482 40 |
| J'n'y | 8. | " cash | 212 47 |
| | 8. | " cash | 431 15 |
| | | | 5,671 78 |

DR.

| | | | |
|---|---|---|---|
| Dec. | 23. | To 30 hogs, 6,780, 5,424 @ 8½ | 461 00 |
| | 31. | " 17 slaughtered, 2,139 " 8½ | 181 81 |
| J'n'y | 1. | " 31 hogs, 5,830, 4,664 " 9 | 419 76 |
| Dec'r | 14. | " 3 keg' sausage-skins | 36 00 |
| J'n'y | 1. | " ½ bbl. sausage-skins | 36 00 |
| | " | " 21 hogs, omitted 28 Nov. | 256 00 |
| | 12. | " 36 " 6,610, 5,288 " 11⅝ | 568 46 |
| | 18. | " 25 " 4,785, 3,828 " 11½ | 425 87 |
| | 25. | " 25 " 4,960, 3,968 " 10¾ | 426 56 |
| Feb'y | 1. | " 24 " 4,290, 3,432 " " | 368 94 |
| | 6. | " 32 " 6,875, 5,500 " 11½ | 618 75 |
| | 15. | " 25 " 5,955, 4,764 " 11⅜ | 541 90 |
| | 23. | " 25 " 5,275, 4,220 " 11⅜ | 501 13 |
| | 8. | " 2 half bbls. casings | 78 50 |
| | | | 5,028 68 |

CR.

| | | | |
|---|---|---|---|
| J'n'y | 8. | By cash | 461 |
| | 24. | " cash | 181 81 |
| | 24. | " cash | 419 76 |
| | 24. | " cash, 172.43; Feb. 7, do., 83.57 | 256 |
| Feb'y | 7. | " cash | 568 46 |
| | 7. | " cash, $264; 22, do., 161.87 | 425 87 |
| | 22. | " cash | 426 56 |
| | 22. | " cash, 197.57; 29, cash, 171.37 | 368 94 |
| | 29. | " cash, 328.63 | 328 63 |
| | " | " note at 12 mo's | 1,000 00 |
| | " | " balance over | 591 65 |
| | | | 5,028 68 |

*John Fister in ac. with V. Willett & Co.*

DR.

| | | | |
|---|---|---|---|
| 1864. | | | |
| Feb'y | 29. | To balance due on settlement to-day | 591 65 |
| March | 2. | " 25 hogs, 5,415, 4,332 @ 12¼ | 530 67 |
| | 8. | " 25 do. 5,185, 4,148 " 12c | 497 76 |

| | | | | |
|---|---|---|---|---|
| | 16. | " 26 do. 5,245, 4,196 " 12c | | 503 52 |
| | 22. | " 32 do. 6,590, 5,272 " 12½ | | 639 23 |
| | 29. | " 29 do. 6,315, 5,052 " 11⅝ | | 587 30 |
| | | | | 3,350 13 |
| Ap'l | 7. | To 30 hogs, 6,320, 5,056 " 11¾ | | 600 00 |
| | 15. | " 25 do. 5,125, 4,100 " 12½ | | 512 50 |
| | 21. | " 32 do. 5,555, 4,444 " 12¼ | | 566 61 |
| | 22. | " ½ bbl. sausage-sk'ns | | 45 00 |
| | 29. | " 25 hogs, 4,815, 3,852 " 12⅜ | | 495 95 |
| May | 5. | " 31 do. 6,385, 5,108 " 12¾ | | 651 27 |
| " | 13. | " 30 do. 6,575, 5,260 " 12½ | | 657 50 |
| " | 20. | " 30 do. 5,835, 4,668 " 12½ | | 583 50 |
| | 28. | " 30 do. 5,975, 4,780 " 12⅝ | | 591 50 |
| June | 4. | " 30 do. 6,010, 4,808 " 12½ | | 601 00 |
| | 13. | " 30 do. 5,780, 4,624 " 12⅝ | | 583 78 |
| | 15. | " 1 keg sausage-skins | | 15 00 |
| | 20. | " 30 hogs, 6,242, 4,992 " 12⅝ | | 630 24 |
| | | | | 6,533 85 |

*John Fister in ac. with V. Willett & Co.*

CR.

| | | | | |
|---|---|---|---|---|
| 1864. | | | | |
| Mar. | 8. | By cash | | 619 |
| | 15. | " cash | | 462 |
| | 22. | " cash | | 487 |
| Ap'l | 2. | " cash | | 839 47 |
| | " | " note for 6 months | | 591 67 |
| | 12. | " cash | | 351 01 |
| | | | | 3,350 15 |
| Ap'l | 12. | By cash, 312$; 26, cash, 288$ | | 600 |
| | 26. | " cash | | 512 50 |
| May | 4. | " cash | | 566 61 |
| June | 20. | " am't over | | 45 00 |
| May | 13. | " cash | | 495 95 |
| " | " | " cash, 204$; 19, do., 411$; 29, do. 36 | | 651 |
| | 29. | " cash, 567$; 5 Jan., do., 90 | | 657 |
| June | 5. | " cash, 313; 72, do., 270.50 | | 583 50 |
| | 12. | " cash, 263.50; 22, do., 328 | | 591 50 |
| | 22. | " cash, 252$; 1 July, do., 249$ | | 601 |
| July | 1. | " cash, 351$; 11, do., 232.78 | | 583 78 |
| June | 20. | am't ever | | 45 00 |
| | 11. | cash, 367.22; 16, do., 263.02 | | 630 24 |
| | | | | 6,533 08 |

*John Fister in ac. with V. Willet & Co.*

DR.

| | | | | |
|---|---|---|---|---|
| June | 20. | To bal. over 77 c'ts only × | | 60 00 |
| | 29. | " 18 hogs, 4,310, 3,448 @ 13½ | | 465 48 |
| July | 6. | " ½ bbl. sausage-skins | | 45 00 |
| | 10. | " 11 hogs, 2,330, 1,864 " 15¼ | | 284 25 |
| | 17. | " 10 do. 2,020, 1,616 " 17½ | | 282 80 |
| | 20. | " 29 do. 3,500, 4,240 " 16⅝ | | 710 20 |
| | 26. | " 30 do. 5,865, 4,692 " 16¼ | | 762 45 |
| Aug't | 5. | " 30 do. 5,510, 4,408 " 15½ | | 672 22 |
| | 13. | " 30 do. 5,875, 4,700 " 15¾ | | 740 25 |
| | 22. | " 30 do. 5,740, 4,592 " 15½ | | 711 76 |
| | 30. | " 31 do. 6,130, 4,904 " 17½ | | 858 20 |
| Sept. | 8. | " 21 do. 3,470, 2,776 " 16¾ | | 465 |
| | 12. | " 30 do. 5,620, 4,496 " 18⅝ | | 826 14 |
| | 19. | " 29 do. 5,480, 4,384 " 18½ | | 827 48 |

| | | | |
|---|---|---|---|
| | 26. | " 31 do. 6,245, 4,996 " 19¾ | 986 70 |
| | 30. | " 1 keg sausage-skins | 30 00 |
| Oct. | 4. | " 30 hogs, 6,290, 5,032 " 19⅜ | 974 95 |
| | 13. | " 29 do. 6,540, 5,232 " 18½ | 967 92 |
| | " | " 64 sausage-skins, 874 | 55 68 |
| | 20. | " 20 hogs, 4,590, 3,672 *a* 18½ | 679 32 |
| | | | 11,405 80 |

*John Fister in acc't with V. Willett & Co.*

| | | | |
|---|---|---|---|
| July | 16. | By cash, 122; 24, cash, 343.48 | 465 48 |
| | 24. | " cash, 146.52; 7 Aug't, do., 137.73 | 284 25 |
| Aug't | 7. | " cash | 282 80 |
| | 7. | " cash, 661.47; 21, do., 47.73 | 710 20 |
| | 21. | " cash | 762 45 |
| | 21. | " cash, 188.82; 4 Sept, do., 483.40 | 672 22 |
| Sept. | 4. | " cash, 516.60; 11, cash, $323.65 | 740 25 |
| | 11. | " cash, 511.35; 18, cash, 200.41 | 711 76 |
| | 18. | " cash, 484.59; 25, cash, 373.61 | 858 20 |
| | 25. | " cash, 300.99; 3 Oct., do., 164.61 | 465 00 |
| Oct. | 9. | " cash | 826 14 |
| | 9. | " cash, 309.25; 23, do., $518.23 | 827 48 |
| | 23. | " cash, $831.77; 30, do., 154.93 | 986 70 |
| | 30. | " cash, 645.17; 6, cash, 329.88 | 974 95 |
| Nov. | 6. | " cash, 487.12; 13, cash, 480.80 | 967 92 |
| | 13. | " cash, 219.20 | 212 20 |
| | | Balance over | 650 80 |
| | | | 11,405 80 |

*John Fister in ac. with V. Willett & Co.*

DR.

| | | | |
|---|---|---|---|
| 1864. | | | |
| Oct. | | To am't bro't over | 650 80 |
| | 26. | " 25 hogs, 5,790, 4,632 @ 18⅝ | 862 71 |
| Nov. | 2. | " 30 do. 6,800, 5,440 " 17¾ | 965 60 |
| | 10. | " 28 do. 6,720, 5,376 " " | 954 24 |
| | 11. | " ½ bbl. sausage-skins | 78 00 |
| | 19. | " 30 hogs, 6,945, 5,556 " 17½ | 951 46 |
| | 29. | " 30 do. 6,880, 5,504 " 17 | 935 68 |
| Dec'r | 8. | " 25 do. 6,035, 4,825 " 16⅞ | 814 73 |
| | 16. | " 20 do. 4,373, 3,500 " 17¾ | 621 25 |
| | 22. | " ½ bbl. sausage-skins | 78 |
| 1865. | 24. | " 25 hogs, 4,935, 3,948 " 18¼ | 720 51 |
| Jan'y | 3. | " 21 do. 4,475, 3,580 " " | 653 35 |
| | 9. | " 20 do. 4,130, 3,304 " 18⅝ | 615 37 |
| | 13. | " 25 do. 6,090, 4,872 " 19⅜ | 925 68 |
| | 21. | " 25 do. 5,770, 4,615 " 19½ | 888 58 |
| | 30. | " 21 do. 5,465, 4,372 " " | 841 61 |
| Feb'y | 3. | " ½ bbl. sausage-skins | 78 00 |
| | 6. | " 10 hogs, 2,190, 1,752 " 19 | 332 88 |
| | 9. | " 25 do. 5,665, 4,532 " 19¾ | 895 00 |
| | 15. | " 21 do. 4,620, 3,696 " 19 | 702 24 |
| | | | 13,565 69 |

*John Fister in ac. with V. Willett & Co.*

CR.

| | | | |
|---|---|---|---|
| 1864. | | | |
| Nov. | 12. | By note at 12 months for | 1,000 00 |
| | " | " note ½ months for | 1,000 00 |
| | 20. | " cash | 479 |
| | 20. | " cash, 206$; 1 Dec., do., 748.24 | 954 24 |

| | | | |
|---|---|---|---|
| Dec. | 1. | " cash, 172$; 11, do., 779.46 | 951 46 |
| | 11. | " cash, 290.54; 25, do , 645.14 | 935 68 |
| | 25. | " cash, 316.86; 5 Jan'y, cash, 497.78 | 814 73 |
| Jan'y | 5. | " cash, 402.13; 12, cash, 219.12 | 621 25 |
| | 12. | " cash, 349$; 20, cash, 371.51 | 720 51 |
| | 20. | " cash, 403.50; 29, do., 249.85 | 653 35 |
| | 29. | " cash, 525.15; 7 Feb'y, do., 90.22 | 615 37 |
| Feb'y | 7. | " cash, 809.78; 14, do., 116$ | 925 68 |
| | 14. | " cash, 519.10; 21, do., 369.52 | 888 62 |
| | 21. | " cash, 325.52; 28, do516., 09 | 841 61 |
| | 28. | " note at 6 months for | 1,000 00 |
| | 28. | " cash, 44$ | 44 00 |
| | 28. | " note at 6 months for | 1,000 00 |
| | " | " am't over | 120 19 |
| | | | 13,565 69 |

*John Fister in ac. with V. Willett & Co.*

DR.

| | | | |
|---|---|---|---|
| 1865. | | | |
| Feb'y | 28. | To bal. bro't over | 120 69 |
| | " | " 13 hogs, 3,460, 2,768 @ 20¼ | 567 44 |
| | 28. | " 33 do. 7,540, 6,032 " 20⅝ | 1,259 18 |
| Mar. | 2. | " ½ bbl. sausage-skins | 78 00 |
| | 11. | " 25 hogs, 5,680, 4,544 " 20¼ | 931 62 |
| | 20. | " 25 do. 5,815, 4,652 " 19½ | 918 75 |
| | 27. | " 20 do. 3,425, 2,740 " 18$ | 493 20 |
| Ap'l | 1. | " 20 do. 3,800, 3,040 " 18½ | 562 40 |
| | 6. | " 20 do. 4,510, 3,608 " 19¾ | 712 58 |
| | 13. | " 20 do. 4,610, 3,688 " 18¾ | 690 50 |
| | 22. | " 25 do. 5,075, 4,060 " 17½ | 720 65 |
| | 28. | " 1 keg sausage-skins | 27 00 |
| | 29. | " 25 hogs, 4,775, 3,828 " 15¼ | 592 10 |
| May | 5. | " 25 do. 5,050, 4,040 " 14⅞ | 600 95 |
| | 13. | " 25 do. 5,450, 4,360 " 15$ | 654 00 |
| | 19. | " ½ bbl. sausage-skins | 75 00 |
| | " | " 28 hogs, 6,600, 5,280 " 14⅜ | 759 00 |
| | 26, | " 28 do. 6,290, 5,032 " 13 | 654 16 |
| June | 4. | " 25 do. 5,300, 4,240 " 12½ | 540 60 |
| | 12. | " 6 do. 1,600, 1,280 " 13$ | 166 40 |
| | | | 11,124 22 |

*John Fister in ac. with V. Willett & Co.*

CR.

| | | | |
|---|---|---|---|
| 1865. | | | |
| Mar. | 12. | By cash | $1,161 12 |
| | 21. | " cash | 810 00 |
| | 29. | " cash, $800 | 800 00 |
| Ap'l | 4. | " cash, $500 | 500 00 |
| | 10. | " cash, $576 | 576 00 |
| | 18. | " cash | 562 00 |
| | 25. | " cash | 689 00 |
| May | 2. | " cash | 620 00 |
| | 9. | " cash | 520 00 |
| | 16. | " cash | 659 00 |
| | 25. | " cash | 702 00 |
| June | 1. | " cash | 700 00 |
| | 8. | " cash | 540 00 |
| | 15. | " cash | 575 00 |
| | 22. | " cash | 315 00 |
| | 29. | " cash | 390 00 |
| July | 6. | " cash | 536 00 |
| | | " am't bal. over | 469 10 |
| | | | $11,124 22 |

*John Fister in ac. with V. Willett & Co.*

DR.

| | | | |
|---|---|---|---|
| 1865. | | | |
| June | | To bal. bro't over | 469 10 |
| | 15. | " 9 hogs, 1,925, 1,540 @ 13¼ | 204 00 |
| | 19. | " 25 do. 5,500, 4,400 " 13⅜ | 588 50 |
| | 27. | " 28 do. 5,590, 4,472 " " | 598 13 |
| July | 6. | " 30 do. 6,150, 4,920 " " | 658 00 |
| | 14. | " 20 do. 4,330, 2,464 " 14⅜ | 510 94 |
| | 20. | " 30 do. 6,100, 4,880 " 15⅜ | 750 30 |
| | 21. | " ½ bbl. sausage-skins | 68 00 |
| | 29. | " 27 hogs, 5,550, 4,440 " 16¼ | 722 25 |
| Aug't | 7. | " 13 do. 2,825, 2,260 " 17 | 384 20 |
| | 10. | " 29 do. 6,080, 4,864 " " | 826 88 |
| | 19. | " 25 do. 5,494, 4,396 " 16½ | 725 33 |
| | 27. | " 30 do. 6,195, 4,956 " 16⅝ | 830 13 |
| Sept. | 5. | " 25 do. 4,990, 3,992 " 17⅜ | 708 58 |
| | 12. | " 20 do. 4,600, 3,680 " 18 | 662 40 |
| | 19. | " 31 do. 6,535, 5,228 " " | 941 00 |
| | 30. | " 24 do. 5,175, 4,140 " 20 | 828 00 |
| Oct. | 6. | " 22 do. 5,185, 4,148 " 20⅛ | 834 78 |
| | 18. | " 15 do. 3,125, 2,500 " 19½ | 481 25 |
| | 23. | " 15 do. 3,950, 3,160 " " | 608 30 |
| | | | 12,400 07 |

*John Fister in ac. with V. Willett & Co.*

CR.

| | | | |
|---|---|---|---|
| | | Am't over | |
| July | 13. | By cash | 438 00 |
| | 20. | " cash | 536 00 |
| | 30. | " cash | 673 00 |
| Aug. | 8. | " cash to Clark | 600 00 |
| | 20. | " cash | 1,075 00 |
| | 28. | " cash | 733 00 |
| Sept. | 4. | " cash | 700 00 |
| | 12. | " cash | 640 00 |
| | 20. | " cash | 644 00 |
| Oct. | 2. | " cash | 944 00 |
| | 8. | " cash J. P. W | 587 00 |
| | 17. | " cash to Clark | 685 00 |
| | 26. | " cash " Willett | 480 00 |
| Nov. | 1. | " cash | 608 30 |
| | 7. | " cash | 476 00 |
| | 14. | " cash | 500 00 |
| | 21. | " cash | 405 00 |
| | " | " cash on 30 Oct | 1,500 00 |
| | | " bal. over | 175 77 |
| | | | 12,400 07 |

*John Fister in ac. with V. Willett & Co.*

DR.

| | | | |
|---|---|---|---|
| 1865. | | | |
| | | Am't bro't over | 175 77 |
| Oct. | 31. | To 12 hogs, 3,160, 2,528 @ 19 | 480 32 |
| Nov. | 7. | " 12 do. 3,550, 2,840 " 18⅞ | 536 00 |
| | 13. | " 15 do. 3,550, 2,840 " 18 | 511 20 |
| | | | 1,703 29 |
| | | " 1 keg sausage-skins | 23 00 |
| | | | $1,726 29 |

CR.

| | | | |
|---|---|---|---|
| 1865. | | | |
| Dec. | 14. | By note at 4 months from this date for..... | $1,726 29 |

DR.

| | | | |
|---|---|---|---|
| 1865. | | | |
| Nov. | 21. | To 15 hogs, 4,015, 3,212 @ 17×..... | 546 04 |
| | 28. | " 15 do. 4,685, 3,748 " 16¾ ..... | 627 79 |
| Dec. | 18. | " 15 do. 3,975, 3,180 " 15×..... | 477 00 |
| | 27. | " 15 do. 4,010, 3,208 " ..... | 481 20 |
| Ma'ch | 2. | " 10 do. 2,060, 1,648 ..... | |

*John Fister in ac. with V. Willett & Co.*

CR.

| | | | |
|---|---|---|---|
| Dec. | 1. | By cash..... | 546 04 |
| | 14. | By cash..... | 627 79 |
| | 1866. | | |
| Jan. | 2. | By cash..... | 400 00 |
| | 12. | By cash..... | 481 00 |
| | 24. | " cash p'd Willett ..... | 320 00 |
| March | 12. | " cash to Beymer..... | 236 00 |

43 *Deposition of Martin Cady for compl't.*

MARTIN CADY, being duly sworn, in answer to the questions propounded by Mr. Adams, deposes and says:

I reside on the corner of 23d and M streets, in this city. I am a "stoker" by occupation. I am 34 years of age. I knew Mr. Voltaire Willett in his lifetime. I also know Mr. & Mrs. Fister.

1. Q. Did you ever buy a lot or lots from Mr. Fister?

A. Yes, sir; I bought a lot on the day of sale from Mr. Fister. I bought, on that day, a lot 27 feet 2 inches, I believe. I paid 28 cents a foot for it. The consideration named in the deed is the amount paid. I afterwards bought five feet from Mr. Willett. It was a long time after I bought from Mr. Fister. They way I came to buy the additional five feet was this: I found that my lot was too large for one house and not large enough for two, and so I thought I would buy four or five
44 feet more. I spoke to Mr Fister about it, and he said all of that ground was Mr. Willett's. "Very good," says I. When I saw Mr. Willett I spoke to him about it, and he said the ground was his; that he had bought it.

(Conversation with Mr. Willett objected to by Mr. Fendall.

Mr. Adams objects to latter part of answer of witness, on the ground of not being responsive to the question.)

2. Q. My question was: How much did you pay Mr. Willett for that lot?

A. I do not know. I know I bought about five feet. I think I paid $153 for the five feet.

3. Q. Is that the adjoining lot you bought from Mr. Fister?

A. Yes, sir. When I spoke to Mr. Willett about this additional piece of ground he said: "I intend to subdivide these lots, and if I can spare it I will give you five feet off the west lot." He says: "After I have subdivided this ground I will give you five feet off, and I will do something further: I will give it to you at the same price you paid for the other."

45 4. Q. At the time you got your deed from Mr. Fister, did you pay any money?

A. I paid one-third cash, and the balance in six and twelve months. The money was laid on the table and afterwards taken by Mr. Willett.

5. Q. Who was present at that time?

A. Mr. McNamee, and Patrick Cady, his wife, Mr. & Mrs. Fister, and my wife. I paid the balance of the money to Mr. Willett, and he gave me a deed of release.

6. Q. Did you pay interest on the money?

A. Yes, sir.

7. Q. Do you remember the date of your first payment?

A. No, sir.

8. Q. Was it at the time your deed bears date?

A. Yes, sir.

Cross-examination by Mr. Fendall:

9. Q. Then, as I understand you, Mr. & Mrs. Fister both told you that they had sold the lots between yourself and Patrick Cady to Mr. Willet?

46 A. A day or two after the sale we were growling about the deeds, and were talking to Mr. Fister. Mr. Fister, as I understood him, said he turned the lots over to Mr. Willett.

10. Q. Were these lots of Mr. Willett's as valuable as that one bought by Patrick Cady, per square foot?

(Objected to by Mr. Adams, on the ground that the deeds given by Willett show the price of the lots.)

A. There was no difference in the ground, except that in Patrick's. I didn't suppose the corporation alley run any further than Patrick's at that time, and Mr. Willett took off and struck out an alley for the accommodation of these other lots. There was no difference in the ground except that, that I saw. That enhanced the value, of course.

11. Q. Did Mr. Willett strike off the alley there before or after the sale to Patrick Cady?

A. It was afterwards.

12. Q. Why didn't Mr. Fister, on the day of sale, sell these other three lots?

(Objected to.

47 A. Because he could not sell.

13. Q. Why was it Patrick bought his lot and did not buy one of the other three?

(Objected to.)

A. I do not know about that. I can say nothing about that, except that this alley was coming to it; and, furthermore, there was a frame house built there already, and therefore he could build another frame house there, which he could not do if there was a brick house there.

14. Q. Then, at the time, you think the lot bought by Patrick Cady was worth more than either of the other three?

A. Neither of them was worth what it fetched.

A. Yes, sir; and it was not worth what it fetched.

his
MARTIN + CADY.
mark.

Witness:
J. O. CLEPHANE.

Sworn & subscribed before me this 5th day of February, A. D. 1871.
JA'S O. CLEPHANE,
*Examiner.*

48 *Deposition of Patrick Cady for complainant.*

PATRICK CADY, being duly sworn, in answer to questions by Mr. Adams, deposes and says:

I reside in Washington, D. C. I knew Voltaire Willett in his lifetime. I also know Mr. & Mrs. Fister.

I bought a lot of ground from Mr. Fister, and he and his wife signed the deed at the house. Mr. Willett, Mr. McNamee, Martin Cady, and Mr. & Mrs. Fister were present at the time of the signing of the deeds. I paid 20 cents a foot. I cannot tell what the whole amounted to. The deed will show. The payments were one-third cash, and balance in six and twelve months. I do not remember now how much money I paid on the occasion of the first payment; but the money was laid on the table and all turned over to Mr. Willett. The balance of the money was paid to Mr. Willett.

1. Q. Did you subsequently buy any more ground? and, if so, state where you bought it and from whom.

(Objected to.)

49 A. Yes, sir. I afterwards bought five feet from Mr. Willett, and paid him $110 for it, and got a deed from him.

Deed produced. Deed recorded in Liber E. C. E. 16, folio 282.

I also paid interest to Mr. Willett.

PATRICK his + mark. CADY.

Witness:

J. O. CLEPHANE.

Sworn & subscribed to before me this 5th day of February, A. D. 1871.

JA'S O. CLEPHANE,
*Examiner.*

*Deposition of Stephen Dorsey for complainant.*

STEPHEN DORSEY, being duly sworn, deposes and says, in answer to questions by Mr. Adams:

I reside on 23d street, between L & M. I am a "stoker" by trade; and am 35 years of age. I knew Mr. Voltaire Willett in his lifetime.

50 I also know Mr. & Mrs. Fister. They on the same street, about a block and a half from me.

1. Q. Did you buy a lot of ground, and, if so, from whom, on 23d, between L & M?

A. Yes, sir; and I have a deed for it.

(Objected to.)

Deed produced. Deed recorded in liber No. 15, folio 136. I paid altogether $401. It was not all paid at one time, but in payments of six, twelve, and eighteen months, with interest. The deed is dated 6th of October, 1869.

(Objected to.)

The notes are all paid, and I got my deed. There was some little delay about getting the deed owing to the death of Mr. Willett. I drew my money from the building association. I got a deed subsequently, and this is the consideration named on it.

STEPHEN his + mark. DORSEY.

Sworn to before me this 5th day of February, 1871.
JA'S O. CLEPHANE,
*Examiner.*

51 *Deposition of Matthew McDonald for complainants.*

MATTHEW MCDONALD, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by Mr. Adams:

I reside on 23d street, between L & M. My business is that of a restaurant-keeper. I am 25 years of age. I knew Mr. Vollatire Willett in his lifetime. I also knew Mrs. & Mrs. Fister.

1. Q. Did you purchase any property from Mr. Willett in his lifetime?

(Objected to.)

A. Yes, sir; I bought a lot on 23d street, between L & M streets. It is, I believe, in square 37. The number of the lot is 26. If I am not mistaken, I bought my lot on the 16th of June, 1868. I have a
52 deed for it, but I hav'n't it with me. I purchased 16 feet front first. I paid for that, 25 cents, amounting to $401. That money was paid to Mr. Volltaire Willett. The money was not all paid at one time, but one-third cash, and balance in six and twelve months. I paid one-third down, and the balance to Mr. Willett, with interest. I subsequently bought 17 feet front more, next to my other property; that I bought on the 18th of March, 1869. I paid 28 cents per foot for that. I think the whole came to $521. The notes bore interest; and I have since paid them. I paid most of it to Jas. P. Willett. I have not yet got the deed.

(Testimony objected to by Mr. Fendall.)

MATTHEW MCDONALD.

Sworn & subscribed to before me this 5th day of Feb., A. D. 1871.
JA'S O. CLEPHANE,
*Examiner.*

53 *Deposition of John Lyden, for complainants.*

JOHN LYDEN, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by Mr. Adams:

I reside on 23d street, between L & M streets. I am a gas-house man, and about 40 years of age. I knew Mr. V. Willett in his lifetime?

1. Q. Did you buy any ground from him?

(Objected to.)

A. I did. I bought a lot from him, on 23d street, between L & M streets, near that of Mr. McDonald's. I bought 16 feet front. I have a deed for it.

(Deed produced. Deed recorded June 17, 1869, in Liber "D," No. 10, folio 79.)

$401 was paid altogether; one-third was paid cash, and the bal-
54 ance in six and twelve months. The money, with interest, was paid to Mr. V. Willett.

(Testimony objected to by Mr. Fendall.)

JOHN LYDEN.

Sworn and subscribed to before me this 5th day of Feb., A. D. 1871.
JA'S O. CLEPHANE,
*Examiner.*

FEBRUARY 8, 1871.

Commission met pursuant to adjournment. Present, counsel on either side.

The examination of witnesses was proceeded with as follows:

ADELINE FISTER, recalled.

Examined by Mr. Adams:

1. Q. Just look at this book and state what it is?

A. It is a book in which I kept my accounts with Sherrell &
55 Homiller, and anybody who gave me money. It also contained receipts between Willett and Clark and myself.

(Book made a part hereof, and marked Ex. C.)

2. Q. Look at entry in this book on second leaf from the front, and state what it is.

A. It is a receipt, dated Oct. 20th, 1863. I paid $800, and got that receipt. This book has been in my possession ever since.

3. Q. Do you recognize these receipts in Ex. B:

"Oct. 20. By cash, Clark..... $55 16
" " 20th..... $325 80"

A. Yes, sir.

4. Q. Do you recollect paying Mr. Clark any other money?

A. I did not pay Clark often, but I made one or two—may be more—payments to him; and on one occasion he made a mistake of $100.
56 Mr. Willett claimed afterwards that I still owed that $100, but I produced a receipt of Mr. Clark, and that convinced Mr. Willett I had paid it. He said, referring to Mr. Clark: "That drunken fool—I will get rid of him." He took the piece of paper—the receipt—away with him, and said he would rectify it. I cannot say whether he did so or not.

Cross-examination reserved.

*Deposition of Maria Clements for complainant.*

MARIA CLEMENTS, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by Mr. Adams:

I reside on 21st street, near G. I am 25 years of age, and am
57 married to Mr. John W. Clements. I am the daughter of the complainant. In 1865 I resided on 23d street with my father.

1. Q. Do you remember, about the spring of 1865, of having, with your mother, examined a receipt?

A. I do.

2. Q. Do you recognize this paper? (handing witness paper marked Ex. A.)

A. Yes, sir. That is the paper. One day, while my mother was standing near her bureau, in the house, she called me to her and said she had a receipt there that she could not understand. It had Willett's name on it. I read it, she holding it in her fingers while I did so. The other

hand was dirty, she having been cleaning shad. I told her it was a receipt for $1,500, with no day and date. That was in the month of April, 1865. After I read it, I gave it back to her, and told her to take care of it.

58 Cross-examined by Mr. Fendall:

I am certain this is the same receipt. It looks like it. I have not seen it since that time until the present. I know it was in April, 1865, because she asked me to remember, and I did. I also mentioned the day, but I have now forgotten that. I know this is the same handwriting, and it reads exactly as the one did I read in 1865. The amount is also the same, $1,500, and it is signed by Mr. Willett. I know his writing wherever I see it. I cannot tell whether there was a piece of bottom on the of it or not.

3. Q. What makes you recollect it was April, 1865?

A. When I said, "There is no day and date," she said, "This is the way your father has been doing business. He takes a receipt
59 without day or date. Now we will remember this." That is what makes me recollect it was in April, 1865—my telling her it was in April, 1865. That impressed it on my memory. It could not have been in 1866.

4. Q. Have you had any conversation with her about it since April, 1865, until to-day?

A. We have often talked it over, but I could not state how often. I know nothing further touching the matter in controversy.

MARIA CLEMENTS.

Sworn & subscribed to before me this 8th day of Feb., A. D. 1871.
JA'S O. CLEPHANE, *Com'r.*

*Deposition of Louisa Yeabower for complainant.*

LOUISA YEABOWER, being of lawful age, and being by me first
60 duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by Mr. Adams:

I reside in Georgetown. I am 51 years of age. I am a sister of the complainant, Mr. Fister. I knew V. Willett in his life-time.

1. Q. What do you know about Mr. Fister having sold his stall in the market?

A. I do not know anything at all about it, only that I counted the money, and gave it to him. Mr. Fister said when he got the money, "Now I am going right down to Willett's with this money, and I will have this taken off my book." He then left my house. That was in October, 1865. I counted the money at my house in Georgetown. My nephew purchased the stall. He was boarding with me at the
61 time. Mr. Fister put the money in his pocket on receiving it. He had the book in his side-pocket, and had his hand on it, and he said he would have that taken off.

2. Q. Is this (Ex. "B") the book he had with him at that time?

A. Yes, sir. He says, "I will give Willet this money; I will not carry any of it home."

Cross-examination by Mr. Fendall:

I take it for granted that Mr. Fister went directly from my house to Mr. Willett's. He said he was going there.

3. Q. Did you see the book that he had?

A. I did not see any further than it was in his side-pocket.

4. Q. Did you see the book sticking out of his pocket?

A. Yes, sir; and he put his hand on it. There was not much sticking out, but enough to see what it was. About a quarter of it was sticking out.

62 5. Q. What peculiarity is there about that book by which you can distinguish it from any other pass-book?

A. I think it was by the cover, and by the name being on it.

6. Q. Did you see the name on it on that day when it was sticking out of his pocket?

A. Not particularly.

7. Q. What makes you sure it was that pass-book and not any other?

A. Because he said it was.

8. Q. What made him put his hand on it and state that was the book?

A. Because he was glad to have some money to bring Mr. Willett to lesson the account. This was about the middle of October, I think, but I cannot say positively.

9. Q. What was this money in when you handed it to him?

A. Just loosely, in money.

10. Q. How do you know it was $1,500 you gave him?

63 A. I would be a great blockhead if I didn't recollect that.

11. Q. And this, you say, was in October, 1865?

A. Yes, sir. I know nothing touching the matter in controversy.

LAURA YEABOWER.

Sworn and subscribed to before me this 8th day of February, A. D. 1871.

JA'S O. CLEPHANE,
*Examiner.*

FEBRUARY 15, 1871.

Commission met pursuant to adjournment. Present, counsel on either side.

ADELINE FISTER, recalled by defense.

By Mr. Fendall:

1. Q. When Mr. Willett went away, during the war, where did he go, and how long did he stay?

A. That is something I cannot answer. I think he went to Bla-

64 densburg. I took very little notice of what he did.

2. Q. What makes you certain it was the year 1865, and not some prior or subsequent year that you got this receipt?

A. Because I never sent money but seldom to Mr. Willett, until 1865. He stopped coming to the house about December, 1864. I never had any conversation with him, as I know of, for two years afterwards. I know that I got that paper out of my husband's pocket in 1865, because I sent the money to him. Mr. Willett and I had a difference in December, and he never came to the house any more.

3. Q. If you cannot read writing how is it that you can distinguish Mr. Willett's handwriting from anybody else?

A. Because he handled it so much.

4. Q. Explain in what respect it is different from anybody else?

65 A. It is a larger hand than usual. That is the only allusion I can give you.

5. Q. If you cannot read Mr. Willett's handwriting, how is it you are able to state that the receipt had no date to it?

A. Because my daughter read it to me, and it had no day or date.

6. Q. You have already stated that the receipt was the same as it is now, and that your attention was particularly called to it by the fact that there was no date to it.

A. It was called to it, because my daughter told me to put it away.

By Mr. Adams:

7. Q. You have been asked particularize the time that you took this receipt from the pocket of your husband.

A. I cannot state any particular date, but I think it was the
66 1st of April, 1865. I would not have taken so much notice of it had not been that I was sending money to Mr. Willett, he refusing to come to the house.

8. Q. How long before that time had you given Mr. Fister the money, in two packages, as you described in your testimony-in-chief?

A. It was between the last of January and the first of February.

9. Q. You are sure of that?

A. Yes, sir; because I know what money I made use of, and how I got it.

10. Q. What year?

A. The Government had paid me money for my colored people, and I spliced some of the colored people's money to this money, and tied it up and gave it to him. I had $1,300 and some odd dollars.

her
ADELINE + FISTER.
mark.

Witness:
J. O. CLEPHANE.

67 Sworn and subscribed to before me this 8th day of Feb., A. D. 1871.

JA'S O. CLEPHANE,
*Examiner.*

*Deposition of John Fister for complainants.*

JOHN FISTER, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

(Objected to on ground of incompetency.)

Examined by Mr. Adams:

I reside on 23d street between M & N, in this city. My occupation is that of a butcher, and I am 64 years of age. I am the com-
68 plainant in this case. I knew Voltaire Willett in his lifetime. I had many business transactions with Willett & Clark. I bought pretty nearly all my stock from Mr. Willett. I dealt with Mr. Willett before he entered into partnership with Mr. Clark.

1. Q. Look at this book, (Ex. B,) and state what it is.

A. It is an account of my transactions with the firm of Willett & Clark. The entries there are in the handwriting of Mr. Willett. I do not remember the exact date I stopped dealing with them.

2. Q. Do you remember of Mr. Willett calling on you for a settlement of your matters?

A. Yes, sir; he wanted things closed up. He proposed to have a judgment drawn up. I told him I had no objection, as I wanted to bring things to a close. Finally he got the judgment drawn up,
69 and in a day or two I went down, and there it lay on his desk. I saw him at his house near the depot on that day. I had no books or papers with me at that time. The calculation as to the balance due was made simply from my book and his. I had one book and he had another. That was all I had with me.

3. Q. Had you this paper (Ex. "A") with you?

A. No, sir.

4. Q. Did you remember of its existence at the time?

A. I did not.

5. Q. Had you this book with you at that time? (Ex. C.)

A. No, sir.

6. Q. What did you do with the papers which you say were on his desk?

A. He pulled a paper out for me to sign, and I did so; that was the judgment.

70 7. Q. Were the terms of that judgment explained to you?

A. He never said "boo" about it, and I was fool enough not to ask him to read it. I did not do so because I always put so much confidence in him.

8. Q. Did Mr. Willett, before you went to his house, on this occasion, ever explain how much was due?

A. Once he explained, after I had made some payments.

9. Q. How many papers did you sign that day at his house?

A. Two. Each of them was for a thousand dollars.

10. Q. Was it ever explained to you what that thousand dollars was for?

A. It went to my credit. He kept the notes until I got the money and gave it to him.

11. Q. My question was this: You stated that, at the time you
71 went to Willett's house at his request, you signed this paper, which you say was the judgment. Now, how many other papers did you sign?

A. Two.

12. Q. What was done with them?

A. He kept them until I got the money to redeem them.

13. Q. Did you understand at that time that you were giving a judgment to be entered up against your property?

A. No, sir; I knew nothing about such things. My idea was that the judgment settled the debt.

14. Q. Was it explained to you that it was a judgment to be entered up against you in court?

A. No, sir.

15. Q. Did you ever go into open court or before a judge and confess judgment?

A. No, sir; I signed it at Mr. Willett's, and no more was ever said about it.

72 Q. Did you authorize any person to confess judgment for you in court?

A. No, sir.

Q. You were never the court-house at all?

A. No, sir; not on that business.

Q Do you remember paying Mr. Willett any money just about the time you stopped dealing with him and Clark?

A. That I do not recollect.
Q. Don't you remember of paying him $1,500?
A. Oh, yes, sir; I paid him $1,500 at his house, in 1865.
Q. Had you your book with you at that date?
A. No, sir.
Q. From whom and where did you get that $1,500?
A. From my nephew.
Q. Before that time do you remember of paying Mr. Willett $1,500; and, if so, from whom did you get it?
73 A. Yes, sir; I paid $1,500, and gathered it up myself.
Q. Who gave it to you when you went to pay it to Mr. Willett?
A. My wife.
Q. How was it when you got it from her?
A. It was rolled up in two bundles and tied. I put one roll into one pocket and the other into the other. She gave it to me at the house. I carried it right down to Mr. Willett in the same condition in which my wife gave it to me.
Q. Did Mr. Willett count it?
A. Yes, sir.
Q. Where?
A. At his house.
Q. Had you your book with you on that day?
A. I had not, because I could not find it. I was determined to go, and I told wife not to mind the book, that I would get something to show for it.
74 Q. Do you remember paying Mr. Willett any other sums of money about the time you stopped dealing with them?
A. That I cannot tell. I can only tell when I paid him the $1,500 that I got for the stall.
Q. That is the other $1,500?
A. Yes, sir. I cannot tell when it was exactly that I paid that.
Q. Look at this book (Ex. "B") and state if you saw Mr. Willett make this entry, (pointing to a particular entry.)
A. Yes, sir; I saw him make this entry:
"Nov. st. Cash on October 30th, 1865, 1,500."
Q. Did you pay Mr. Willett that amount that day?
A. Yes, sir.
Q. Had you your book with you on that day?
A. Certainly, I had. I stood behind his chair like when he was
75 giving me credit there after he counted the money. That money I got from my nephew, Mr. Stepper, for my stall in the market. I know I offered him the stall on a Saturday, and not having made up my mind as to what I would ask for it, I told him that if he would come round on Monday, I would let him know what I would take for it. He came round on Monday, and I told him I would like to have $1,500 for it. H said, "That is right smart, but I rec'on I will take it." I said, "Very well, I will get the license transferred." I did so, took it to him, and he gave me the money. My sister, Mrs. Yeabower, counted the money out.
Q. Do you remember the very day you got the money?
A. No, sir.
Q. Was it the same day that you saw Mr. Willett make the entry in that book?
76 A. Yes, sir. I just went up there, taking my book in my pocket. I says to myself, "This money shan't go home at all." I had my wagon with me, and I just drove down and paid the money. Mr.

Willett counted the money over, and laid the book down and put the figures in it. I was behind him like when he put the figures down.

Q. After you had seen Mr. Willett that time and paid him this money, had you other transactions with him with reference to the payment of this balance which is due between you and him?

A. Yes, sir. I authorized him to sell some lots situated on 23d, on the corner of M. He sold two to my knowledge. I was present when they were knocked off. Mr. Williams, of the firm of Green and Williams, was the saleman. Martin and Patrick Cody became the pur-
77 chasers. I executed a deed to Patrick and Martin Cody for those lots. The deeds were executed in my house. The purchase-money was turned over to Mr. Willett according to the understanding. I wanted to sell the three lots to make the debt smaller, but only two were sold. Mr. Willett was to apply the purchase-money to reducing the balance existing between us. I cannot tell whether this was before or after I had signed the judgment.

Q. Do you remember of making any other deed to Willett?

A. No, sir.

Q. Do you remember of signing a third deed?

A. No, sir. The third lot was not sold at the time. There were three lots, Nos. 15, 16, 17; 16 & 17 only were sold.

Q. Do you remember of Mr. McNamee being at your house?

78 A. Yes, sir, once, when the deeds were executed to Martin and Patrick Cady.

Q. Do you remember of, at that same time, *of* executing a deed for that other lot to Mr. Willett?

A. I never heard anything more about the third lot after the two were sold that evening.

Q. What remembrance have you of signing another deed there?

A. None at all.

Q. What lots did you give Mr. Willett authority to sell?

A. Three; but he only sold two.

Q. After the Cadys had bought the lots you have spoken of, had you any other ground there on the same square?

A. Yes, sir, there was another lot; I think it was about 55 feet front.

Q. Did you authorize Mr. Willett to sell that other lot?

79 A. I have plenty of witnesses to prove that the third lot was not sold that evening; and I never heard a word more about it. He was sometimes pretty , and I hated to take shortness from anybody.

Q. He would sometimes get angry?

A. Yes, sir.

Q. When you agreed to let him sell these lots, was he not to apply the purchase-money to the liquidation of the judgment?

A. Certainly.

Q. Did you sell him those lots at a fixed price?

A. I fixed a kind of price on them. I told him not to sell them for less than 20 cents; that it would all be for benefit. I did not want the money.

Q. How be for his benefit?

A. In lessening the debt I owed him.

80 Q. Do you know whether any of that property has been sold to anybody.

A. I have heard it whispered about. There are persons in possession of it—three parties. Their names are McDonald, Dorsey, and Lyden.

A. Not a word, and am ignorant of any such deed.

Q. Have you any knowledge of executing a deed, or was any such deed explained to you as conveyed the lot adjoining the Cadys to Willett?

A. There was never a word said to me about the lot.

Cross-examination postponed by consent till next meeting of commission.

(It is agreed by counsel that a certified copy of deed of John and wife to Voltaire Willett, recorded in Liber E. C., No. 9, folio 168, may be attached to the deposition of this witness.)

JOHN FISTER.

81 Sworn and subscribed to before me this 8th day of February, D. 1871.

JA'S O. CLEPHANE,
*Examiner.*

JOHN FISTER recalled:

Cross-examination by Mr. Fendall:

Q. How many payments of $1,500 each did you make Mr. Willett, on account of these transactions?

A. The first one was made between January and February, 1865.

Q. Where was that payment made to him?

A. At his house.

Q. Did you have your book with you then?

A. I did not.

Q. Did Mr. Willett give you nothing to show you that had paid that amount?

82 A. He gave me a piece of paper and I put it in my vest-pocket and never looked at it. I never thought of it any more.

Q. Do you know where it is now?

A. I am told it is here.

Q. Would you know it if you were to see it?

A. Yes, sir. I would know the size of it.

Q. Where did you receive that money?

A. From my wife; she tied it up in two bundles.

Q. When did you make him the second payment of $1,500?

A. When I sold my stall to my nephew, in October, 1865.

Q. Did you have that book with you when you made that payment?

A. I had; sticking out of this very coat-pocket.

83 Q. Was credit for that amount given you in that book by Mr. Willett?

A. Yes, sir.

Q. You have already stated that you saw Mr. Willett when he made that entry, viz: Nov. 21st. "Cash on 30th October, 1865, $1,500;" and that you on that day paid him $1,500. Why did you let Mr. Willett in that entry state that the money had been received on the 30th of the previous month?

A. He put it on the book the same day he got the money from me, the last $1,500.

Q. How does that entry read?

A. It only says, "cash." That is the way I saw it.

Q. State when it was you went down to Mr. Willett's office to sign the papers for a judgment.

A. I cannot tell that. I have no recollection of signing it, but I took no care in seeing what day it was.

84 Q. What year was it?

A. I do not know that.

Q. What were the other two papers which you signed at the same time that you signed the judgments?

A. They were the two deeds for *them* two lots that were sold, (After a pause.) Oh, yes, sir; those notes I took up these little ones you allude to, I suppose I forgot.

Q. You have already stated that the two papers which you signed at the same time you signed the judgment were kept by Mr. Willett until you ordered them. Have those papers ever been ordered by you?

A. I have seen them since, with my name crossed out.

Q. You have already mentioned you had one book of accounts and Mr. Willett had another.

A. I suppose so.

Q. Please state if this (handing witness book) is the one.

85 A. I cannot tell anything about that; I never saw that.

(Mr. Fendall offers certified copy of one of the accounts in said book, which is made a part hereof, and marked Ex. .

Filed by Examiner Jonson.

Mr. Adams objects to introduction of either the book or certified copy.)

Q. What was the account-book which Mr. Willett had like?

A. The one he used to carry with him was a small one, similar to the one I had from him.

Q. If you didn't understand that the judgment would be entered in court, where did you think it would be entered?

A. I *knowed* where it was going to be entered; I knew by my own judgment that it was going to court.

86 Q. Then, although it was never explained to you that it was a judgment to be entered against you in court, yet you understood that, of course, it would go into court.

A. Yes, sir. My own judgment led me to that.

Q. When was this done—this judgment rendered?

A. I never kept any accounts when I signed.

Q. Did you, at that time, know Mr. Walter S. Cox?

A. No, sir.

Q. If you never authorized any person to confess judgment for you in court, why was it you signed that paper?

A. That judgment?

COUNSEL. Yes, sir.

WITNESS. I will tell you how that was. Mr. Willett got a little

87 uneasy; thought he could do better with the money than its being in my hands, and he proposed a judgment. I agreed to it. He said, "I will get Mr. Bradley to draw up one. In two or three days I came down there again, and took out and put it on his desk, and I signed it. That is the last I heard of it. I never *knowed* one thing that was on it. It was not read to me, proposed to be read to me, or any thing of the kind. Just as soon as I signed my name, he folded it right up and put it into his pocket.

Q. Was any one present when you made Mr. Willett either one of these payments of $1,500?

A. I would not be certain, but I think, when I made the second payment, Mr. Clark was there.

Q. And that was the one that was entered in the book?

88 A. Yes, sir.

Q. You never received from Mr. Willett but one receipt for $1,500.

A. No, sir; not as I know of.

Q. Did you ever ask Mr. Willett to buy from you those lots, between Patrick Cady's and Martin Cady's, for 20 cents per square foot?

A. No, sir; not at all. There never was such a word said in that way.

Q. After the sale of the two lots to the Cadys, and before the signing of the deeds to them, did you, or did any one at your instance, endeavor to get purchasers for the unsold lots?

A. No, sir. I never tried to get a purchaser.

Q. Which lot did you sell to Martin Cady?

A. The corner one.

Q. Which one to Patrick Cady?

A. The one adjoining. There were only two lots. The corner
89 lot fronted two streets.

Q. To whom did you sell the lot furtherist from the corner?

A. That one is not sold yet by me.

Q. Which lot is Patrick Cady in possession of?

A. No. 17, on 23d street.

Q. How far is this lot from the corner?

A. There is one lot on the corner. I do not recollect the depth of that lot. I never bothered myself to find out.

Q. Do you remember giving to Mr. Willett, on the 23d of July, 1864, a due-bill for $110, as the balance on two notes taken up on that day?

A. I have no recollection of it.

Q. Do you recollect of having given two notes, on the 23d of February, 1865, for $1,000 each, and payable to the order of Willett & Co. in six and twelve months after date?

A. No, sir.

90 Q. Do you recollect of having given two notes on the 12th of November, 1864, for $1,000 each, payable to the order of V. Willett & Co. six and twelve months after date, with interest?

A. Yes, sir; I recollect those two.

Q. For what were those two notes given?

A. Stock that I owed him for.

Q. Why did you give those notes and not give cash?

A. I hadn't it.

Q. Did you ever give Messrs. Willett & Clark any other notes for stock?

A. No, sir.

Q. Then, if there are any other notes signed by you, payable to your order, they are not your notes?

A. No, sir.

Q. Are they forgeries?

A. They are not mine.

Q. If your name is attached to them, you did not put it there?

91 A. I do not recollect nothing about it.

Q. Did you, on the 14th of December, 1865, give to Mr. Willett your note for $1,726.29, payable 4 month' after date to the of Voltaire, Willett & Co?

A. I do not recollect *no*thing about it.

Q. If your name is signed to that note, you did not sign it?

A. No, sir.

Q. When you signed this judgment, for what amount was it signed?

A. They would not even tell me.

Q. Did you owe Willett & Clark anything at that time?

A. I cannot tell that.

Q. If the account-book, (Ex. "B,") and the other account book which you say Mr. Willett kept, shows that you owed them anything at that time, are those books correct?

A. I do not know anything about the books, except that one he has got his head on.

92 Q. Do you know either Mr. Jos. H. Bradley, sr., Mr. Jos. H. Bradley, jr., or Mr. A. Thomas A. Bradley?

A. I only know one; that is the old gentleman.

Q. At the time that you signed this judgment, did you have a conversation with either of the young Bradleys about it?

A. No, sir.

Q. Did you ever pay anything on this judgment?

A. Well, now I do not know whether that money that was got for them lots was sold before the judgment was made or afterwards.

Q. Have you ever paid either Mr. Willett or Mr. Clark anything on account of these matters since you signed this judgment?

A. I cannot tell you whether I paid him before the judgment was drawed up or afterwards.

Q. Did you ever pay him, at any one time, the sum of $2,691?

93 A. Not at once. I paid him a great deal more than that at different times.

Q. When did you make the last payment?

A. I cannot tell you.

Q. Can you state whether you ever paid them anything after the 16th of July, 1866? Explain why it is that your recollection about a receipt for $1,500, and about the signing of these deeds, is so distinct when your recollection about the payments is indistinct,

A. I do not know. Some things I can recollect and some things I cannot. That is about the amount of it.

Re-direct by Mr. Adams:

Q. Was or was not the payments of the principal part of the transaction between you and Mr. Willett made by your wife, and not by yourself?

(Objected to.)

94 A. Yes, sir. I very seldom paid anybody.

Q. You speak, in your cross-examination, about two notes. Are these the ones (handing witness two notes) that were taken up at that time?

A. Yes, sir. That is my handwriting.

Q. Were these the notes you received at the time you met Willett at his house when you signed this judgment?

A. These notes were before that.

Q. You had these notes in your possession before that time?

A. Yes, sir.

(Notes introduced in evidence, and marked Exhibit' No. 23.)

Q. Do you remember the date that you went down to Willett's house and signed these papers?

A. No, sir. I did not. I never kept any account. I just signed them and he took them.

Q. Did he read or explain to you any paper that you signed at his house at the time this judgment was signed?

95 (Objected to.)

A. No, sir; not a word.

Q. You have been asked, on your cross-examination, with reference to this receipt, (Ex. B.) You have been asked by Mr. Fendall about the payments of different sums of money to Mr. Willett. Now, do you

remember the first payment of the $1,500 which you have testified to?
A. Yes, sir.
Q. Where was that paid to him?
A. Down at the house.
Q. At the time that you paid the last $1,500, and you say you saw him make the entry in a book, did you read the entry at that time?
A. He was putting it down, and had just looked over his shoulder like.
Q. Did he hand you the book back?
A. Yes, sir.
Q. Did you look at what kind of entry he made?
A. I saw it was "cash for $1,500."
96 Q. Did you read any date to it?
A. It strikes me that it was "30th of October." Clark was present at that time.
I know nothing further touching the matter in controversy.

JOHN FISTER.

Sworn and subscribed to before me, this day of Feb., A. D. 1871.

JA'S O. CLEPHANE,
*Examiner.*

FEBRUARY 24, 1871.

Commission met pursuant to adjournment. Present, counsel on either side.
The examination of witnesses was proceeded with, as follows:

*Deposition of Walter S. Cox, for plaintiff.*

WALTER S. COX, being of lawful age, and being by me first duly
97 sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

Examined by Mr. Adams:

I reside in Georgetown, D. C. Am a lawyer by profession. I know John Fister by name, but not by sight. I have no recollection of having had any professional business with him.
Q. Just look at these papers, and state if you recognize them.
(Handing witness papers in No. 2676, declaration filed 15th June, 1866; certain promissory notes, and confession of judgment.)
A. No, sir.
Q. Did you, on the day named there, appear in open court and confess judgment in the case?
A. I have no recollection about it. I have no recollection of having seen this paper (order confessing judgment) before, but if the record says I did confess judgment, I think it very probable I did.
98 Q. Had you consulted with Mr. Fister prior to that date with reference to this case?
A. I expect not. I do not remember of ever having seen him on the subject or having anything to do with him.
I know nothing further touching the matter in controversy.

WALTER S. COX.

Sworn and subscribed to before me this 24th day of February, A. D. 1871.

JA'S O. CLEPHANE,
*Exam'n'r.*

Mr. Adams, reserving the right to introduce certified copies of the deeds described below, closes evidence for plaintiff.

*List of deeds.*

| | | | | | |
|---|---|---|---|---|---|
| June | 14, | 1869. | Lot to John Lyden | $401 | 00 |
| " | 17, | " | " " Mat. Donahue | 969 | 00 |
| July | 28, | " | " " M. Cady, (5 ft. ground.) | 150 | 00 |
| " | " | " | " " P. Cady, ( " " ) | 105 | 00 |
| Oct. | 6, | " | " " S. Dorsey | 400 | 00 |

Adjourned.

100 *Testimony for defendants.*

JOHN FISTER
*vs.*
JAMES P. WILLETT, EX'R, ET AL. } 2215. Eq. dock. 10.

Deposition of CHARLES MCNAMEE, who, being duly sworn, deposes and says:

I am a notary public for the County of Washington, and District of Columbia, and have been since 1862. I remember taking the acknowledgments of John Fister and wife to several deeds on the 29th day of May, 1867.

Q. Have you any memorandum in your possession, made at the time you took those acknowledgments which enables you to state where the property embraced in those deeds is situated and to whom it was conveyed by those deeds?

A. I have. The property was lots 23, 24, 25, 26, and 27 in the subdivision of original lots 15, 16, & 17 in square 37, in this city, which
101 subdivision is recorded in liber R. W., fol. 14, May 27, 1867. These lots were conveyed as follows: one deed was executed by John Fister and his wife, and by it they conveyed to Voltaire Willett, the above-mentioned subdivision lots 24, 25, 26. I don't know who the grantees were in the other deeds, other than they were the two Codys. The property conveyed by those two deeds, was to Patrick Cody, lot 27 in the same subdivision, and to Martin Cody lot 23 in the same subdivision. The deed now shown me, and marked Exhibit C. M. W., is one of the deeds to which I have already referred, and the acknowledgment of the same was made by Fister before me, and I drove him out of the room while I explained it to his wife, and she acknowledged the same freely to be her act and deed, and that she knew all about it. I know nothing at all about the consideration.

102 Cross-examined:

I read the acknowledgment to her and explained the act in relation to the dower to her at the time. I explained the object of the deed to her. I did not read the whole of the deed to her. I did not say anything at all to her about the consideration. They understood that among themselves. I don't know what the consideration was. I don't recollect that anything was said about the consideration. They understood each other very well.

I did not say a word to John Fister about the consideration. I only know that Mr. Willett had been keeping Mr. Fister up in his business for years. I did not read the deed to Mr. Fister.

CH'S MCNAMEE.

Sworn to and subscribed before me this 2d day of March, 1871.
J. J. JOHNSON,
*Exam'r in Chancery.*

103 (It is admitted that the signatures of Mr. McNamee, as witness and as a notary public, to the deed dated May 29, 1867, and marked Exhibit C. M. N., are the true signatures of Mr. McNamee.)

Appeared, also, JAMES F. WOLLARD, who, being duly sworn, deposes and says:

I reside in *in* this city. I am a real-estate agent, and was such in 1867. I knew the late Voltaire Willett very well. I don't know that I ever did any business with him. He was a friend of mine, and I used to go to his house.

Q. Do you recollect of ever having had any conversation with Mr. Willett about the purchase of some lots, on 23d street, near north M street, in this city?

(Objected to.)

A. I had frequent conversations with him. I don't know how many. I was at the sale. I can't say what time the sale was. I think
104 the sale was made by Green & Williams. [I really can hardly tell the substance of the conversation, but I think he had spoken to me some days before the sale, about the sale, that he wanted me to go up with him, and I did go up with him, and I think there was one or two of *of* the lots sold. I will not be certain whether there were three of the lots sold.] The corner lot, I think, sold for twenty-eight cents, and the other, I think, for twenty cents. He asked me if I thought that was a good price for them. I told him that I thought that was a good fair price.

(All enclosed objected to.)

Q. Do you know what was done with the remaining lots which were offered for sale on that day and not sold?

(Objected to.)

A. I believe he refused to take any less for them, or there were no other bidders present. I don't recollect. I believe he refused to
105 take any less for them than twenty cents. Mr. Willett informed me that he bought the remaining lots. He advised with me about it.

Q. Why did he say he bought them, and what did he give for them?

(Objected to.)

A. He told me that he had taken them at twenty cents a foot, the price the lots sold at. He said he bought them because the parties owed him.

Q. Do you know whether Mr. Fister, or any one for him, between the time of the sale and the conversation with Mr. Willet, to which you have referred, endeavored to get any purchasers for these unsold?

(Objected to.)

A. I do not.

Cross-examined, subject to the exceptions taken:

I know John Fister well. I knew nothing more than I heard
106 about Mr. Fister's ow'ing these lots. He was present at the sale. I never was present when Mr. Fister and Mr. Willet' made any contract about those lots. All I know about the sale of the lots to Mr. Willet' is what he, Willet,' told me.

J. F. WOLLARD.

Sworn to and subscribed before me this 2d day of March, 1871.

J. J. JOHNSON,
*Exam'r in Chancery.*

Adjourned till to-morrow morning at 10.30 a. m.

J. J. JOHNSON,
*Exam'r in Chanc'y.*

Met pursuant to above. Present, counsel on either side; and thereupon JAMES P. WILLET' was duly sworn, deposes, and says:

My name is James P. Willet'. I am one of the defendants in this suit. I am the son and one of the executors of the late Voltaire Willet, deceased.

(Mr. Adams objects to the testimony of this witness, on the
107 ground of incompetency and because he is an executor.)

Mr. Fendall states that this witness is introduced for the sole purpose of proving handwriting of a paper.)

Look at this paper, marked Defendants' Exhibit A, and state if you have ever seen it before; and if so, where?

*Defendant's Exhibit A.*

| | | |
|---|---|---|
| Proceeds sale of Fister's lots: | | |
| 2 lots to Codys, for | | $1,318 16 |
| 3 lots to Willetts | | 1,549 80 |
| | | 2,867 96 |
| By cash p'd auctioneer | 43 32 | |
| " " " deeds & stamps | 12 00 | |
| " " " taxes | 121 64 | |
| | | 176 96 |
| Credit on judgement | | 2,691 00 |

(Objected to.)

A. I have seen it before. I found it amongst my father's papers pertaining to this sale.

Q. State, if you please, in whose handwriting that paper is.

A. My father's; Voltaire Willett's.

108 Mr. Fendall here offers said exhibit in evidence, and the same is herewith filed.

(Mr. Adams objects to the introduction of said paper.)

Cross-examination waived.

JAMES P. WILLETT.

Sworn to and subscribed before me this 3d day of March, 1871.

J. J. JOHNSON, *Examiner.*

Mr. Fendall here offers in evidence paper marked Defendants' Exhibit B, which is admitted by Mr. Adams as being in the handwriting of the Messrs. Bradley, but objects to the paper as evidence.

*Def't's Exhibit B.*

Supreme court, D. C.

VOLTAIRE WILLETT } At law. No. 2676. Judg't June 15, '66.
WILLIAM E. CLARK. }

Rec'd, Washington, June 20, '66, of V. Willett & Co., seventeen $\frac{53}{100}$ dollars, costs & atty's fee in above-entitled case.

BRADLEY & BRADLEY.

109 Appeared, also, WILLIAM E. CLARK, who, being duly sworn, says:

My name is William E. Clark. I reside in this city.

Q. Look at plaintiff's Exhibit B, and state if you have seen that before.

A. I have.

Q. What book is that?

A. It is Mr. Fister's pass-book or account-book.

Q. Of what?

A. Of his dealings with V. Willett & Co.

Q. State, if you please, what is the largest cash payment credetid on that book?

(Objected to.)

A. The largest cash payment credited on the book is $1,500.

Q. How many credits of that amount are on that book?

A. That is all.

Q. Did Mr. Fister ever pay you, or pay Mr. Willett in your presence, at any one time, the sum of $1,500? Answer fully.

110 A. Yes, sir. In the fall of 1865 Mr. Fister called at Mr. Willett's office, and paid him $1,500 in my presence. I don't remember of any one being present but us three, Mr. Willett, Mr. Fister, & myself. I don't think there was.

Q. Did Fister have his pass-book with him?

A. He said he had not. I did not see it.

Q. Was any memorandum made of that payment, by you or Mr. Willet, at that time?

(Objected to.)

A. Mr. Willet gave him a statement—a receipt for the money.

Q. Was any other memorandum made other than the receipt?

(Objected to.)

A. The entry was made on our ledger.

Q. Did Mr. Fister, at that time, say where he got the money?

(Objected to.)

111 A. He said he got the money from his sister, Mrs. Yeabower, from the sale of a stall in the Centre Market, which he sold to his nephew, John Stepper, and said that she kept Stepper's money.

Q. Did he say why he did not have his pass-book with ?

(Objected to, because leading, or suggest the answer.)

A. He said he had gone from home after the money, and was in a great hurry to get the money to Mr. Willett, and did not come past his home to get his book.

Q. Look at this book if you please, (counsel here exhibiting a book to the witness,) and state if that is your ledger, in which Mr. Willett made

that entry; and also if that book contains your account with Mr. Fister?
(Objected to.)
A. Yes, sir, that is the book. It contains Mr. Fister's account
(Mr. Fendall here offers in evidence a copy of the account of
112 John Fister, in said book, made by J. J. Johnson, the examiner, and also certified to by said examiner.)
(Mr. Adams objects to the introduction of said account.)
Said copy is herewith filed, and marked defendants' exhibit T. C.
(I have the copy with the original book, and find the same correct, and a true copy of said original. JOHNSON,
*Exm'n'r.*

Q. State if Mr. Fister ever made any other payment of $1,500.
A. Not to my knowledge. He never paid me $1,500 afterwards, and if he had made it I would have known it.
Q. By whom was your account with Mr. Fister kept?
A. By Mr. Willett.
Q. Did you not have a general knowledge of the account as it ran along?
A. I did.
Q. Were you present at the settlement of the account on the
113 14th of December, 1865, when Mr. Fister gave his note for the balance, as shown in Exhibit C?
(Objected to.)
A. I was not.
Q. During the lifetime of Mr. Willett, did he or did Mr. Fister say that that note was given for too much?
(Objected to.)
A. No, sir.
Q. Since Mr. Willet's death, have you had any conversation with Mr. Fister about this settlement; if so, when?
A. I can't remember of having any conversation with Mr. Fister since Mr. Willett's death, but I have since that settlement was made.
Q. State what that conversation was, and when it took place.
A It took place in Mr. Fister's yard. I think it was in the latter part of 1866; I will not be positive. Mr. Fister said that he had
114 given a judgment to secure the indebtedness, and he thought he had done right, as he owed the money, and had not the money to pay it with, and wanted to secure the debt.
Q. Did Mr. Fister at any time after that make any complaint that the judgment had been confessed for too much?
A. He never has up to this time to me.

Cross-examined:

Q. Mr. Clark, who composed the firm of Willett & Co.?
A. V. Willett and myself?
Q. When did you commence business together?
A. I think it was the first day of April, 1862.
Q. When did Fister first commence to deal with you?
A. It was some time after that; I can't tell the precise time. I think he dealt with us in the latter part of 1862.
Q. What was Fister's business?
115 A. He was a butcher, standing in market. We sold him hogs, after he commenced dealing regular, about once a week. Mr. Willett did the most of the collecting from Fister; I did some of it. The receipt in plaintiff's Exhibit C, on page 3, is in my handwriting, and I presume I

received the money, or else it would not be there. I was not present at the final settlement between Willett & Fister.

Q. You have stated in your examination-in-chief that you were present when Mr. Fister paid Mr. Willett $1,500; will you please state what day that was?

A. It was some time in the fall of 1865. I can't give the date.

Q. What time of the day was it?

A. I can't tell the time; as near as I recollect, it was the middle part of the day. I don't know what day of the week it was; I was at Mr. Willett's house before Fister came. I don't remember whether
116 Fister came there on foot or in his carryall. I don't know that I knew at the time. I was in Mr. Willet's office at the time Fister came.

Q. What is the size of Willett's office?

A. It is a large room in *in* the basement. Willett was sitting at his desk when Fister paid him the $1,500, and I was sitting on a little whiskey-chest. I heard all the conversation that took place between Willett and Fister in that room.

Q. Did Fister drink anything while he was there?

A. I think he took a little gin-toddy.

Q. Did you drink?

A. I think we all took a little.

Witness looks at plaintiff's Exhibit B, and says: I have seen it before, it is Mr. Fister's pass-book, between V. Willett & Co. and myself. Mr. Willett was sitting at the desk when he received the money, and I was sitting by him. I saw him give Fister credit for the money, and give him a receipt.

117 Q. Is not the receipt he gave him for the $1,500 in Plaintiff's Exhibit B, upon that day, item of November 21st, 1865.

A. No, sir; because he had not that book with . He did not show it if he had. The credit, in Plaintiff's Exhibit B, is in the handwriting of Mr. Willett. Fister ceased dealing with the firm in November, 1865, I think. I don't remember when the conversation occurred in the yard. I think it was in 1866. I will not be positive. I can't tell the month. It appears to me it was in the fall of the year. I can't call the season of the year. I had no books or papers before me at the time we were conversing about this matter. I did not go to see him about this matter.

Redirect:

Q. Upon what was that receipt written?

(Objected to.)

118 A. Written on paper.

Q. Was it written in any book?

A. It was written on a piece of paper.

Q. Could you identify that piece of paper if you saw it again?

A. I could not.

Recross:

The witness, looking at Plaintiff's Exhibits C, says that the receipt which I have mentioned in that book was on account of his dealings with us.

W'M E. CLARK.

Sworn to and subscribed before me this 3d day of March, 1871.

J. J. JOHNSON,
*Examiner.*

Adjourned till Monday at 10 a. m., the 6th inst.

J. J. JOHNSON,
*Examiner.*

119 *Exhibit C to defendants' testimony.*

Copy of account between John Fister and V. Willett & Co., from August, 1864, to December, 1865.

I hereby that the foregoing is a correct transcript of account between John Fister & V. Willett & Co., from August, 1864, to Dec., 1865.

JA'S O. CLEPHANE,
*Examiner.*

MARCH 4, '71.

*John Fister in ac't with V. Willett & Co.*

DR.

| 1864. | | | |
|---|---|---|---|
| Aug. | | To bal. from folio 18 for sausage-skins | $105 00 |
| " | | " " on hogs " " | 483 00 |
| " | 13. | " 30 hogs, 5,875, 4,700, *a* 15½ | 740 25 |
| " | 22. | " 30 do. 5,740, 4,592, " 15½ | 711 76 |
| " | 30. | " 31 do. 6,130, 4,904, " 17½ | 858 20 |
| Sept. | 8. | " 21 do. 3,470, 2,776, " 16¾ | 465 00 |

120 *John Fister in ac. with V. Willett & Co.*

DR.

| 1864. | | | |
|---|---|---|---|
| Sept. | 12. | To 30 hogs, 5,620, 4,496, *a* 18⅜ | 826 14 |
| " | 19. | " 29 do. 5,480, 4,384, " 18¾ | 827 48 |
| " | 26. | " 31 do. 6,245, 4,996, " 19¾ | 986 70 |
| " | 30. | " 1 keg sausage-casings | 30 00 |
| Oct. | 4. | " 30 hogs, 6,290, 5,032, *a* 19⅜ | 974 95 |
| " | 13. | " 29 do. 6,540, 5,232, " 18½ | 967 92 |
| " | " | " 64 lbs. sausage-skins, " 87c | 55 68 |
| " | 20. | " 20 hogs, 4,590, 3,672, " 18½ | 679 32 |
| " | 26. | " 25 do. 5,790, 4,632, " 18⅝ | 862 71 |
| Nov. | 2. | " 30 do. 6,800, 5,440, " 17¾ | 965 60 |
| | | | $10,540 11 |
| Nov. | 10. | To 28 hogs, 6,720, 5,376, *a* 17¾ | 954 24 |
| " | 11. | " ½ bbl. sausage-skins | 78 00 |
| " | 19. | " 30 hogs, 6,945, 5,556, *a* 17½ | 951 47 |
| " | 29. | " 30 do. 6,880, 5,504, " 17 | 935 68 |
| Dec. | 8. | " 25 do. 6,035, 4,828, " 16⅝ | 814 73 |
| " | 16. | " 20 do. 4,375, 3,500, " 17¾ | 621 25 |

CR.

| 1864. | | | |
|---|---|---|---|
| Sept. | 4. | By cash | 483 40 |
| " | " | " cash, $516.60; 11, do. $223.65 | 740 25 |
| " | 11. | " do. $511.35; 18, do. $200.41 | 711 76 |

121 *John Fister in ac. with V. Willett & Co.*

CR.

| 1864. | | | |
|---|---|---|---|
| Sept. | 18. | By cash, $484.59; 25, do. $373.61 | 858 20 |
| " | 25. | " do. $300.39; 9 Oct., do. $164.61 | 465 00 |
| Oct. | 9. | " cash | 826 14 |
| " | 9. | " do. $309.25; 23, do. $518.23 | 827 48 |
| " | 23. | " do. $831.77; 30, do. $154.93 | 986 70 |

| | | | | |
|---|---|---|---|---|
| Oct. | 30. | By do. $645.07; 6 Nov., do. $329.88 | | 974 95 |
| Nov. | 6. | " do. $487.12; 13, do. $480.80 | | 967 92 |
| " | 20. | " cash | | 479 11 |
| " | 13. | " do. | | 219 20 |
| " | 12. | " note, 6 mo., for | | 1,000 00 |
| " | " | " do. 12 " " | | 1,000 00 |
| | | | | $10,540 11 |
| Nov. | 20. | By cash, $206; 1 Dec., do. 748.24 | | 954 24 |
| | | (This am't to page 55.) | | |
| Dec. | 1. | By cash, $172.00; 11, do. 779.46 | | 951 46 |
| " | 11. | " do. 290.54; 25, do. 645.14 | | 935 68 |
| " | 25. | " do. 316.86; 5 Jan., do. 497.87 | | 814 73 |
| Jan. | 5. | " do. $402.13; 12, do. 219.12 | | 621 25 |

122 *John Fister in ac. with V. Willett & Co.*

DR.

| | | | | |
|---|---|---|---|---|
| 1864. | | | | |
| Dec. | | To bal. from folio 35 | | 78 00 |
| " | 22. | " ½ bbl. sausage-skins | | 78 00 |
| " | 24. | " 25 hogs, 4,935, 3,948, *a* 18¼ | | 720 51 |
| 1865. | | | | |
| Jan'y | 3. | " 21 do. 4,475, 3,580, " 18½ | | 653 35 |
| " | 9. | " 20 do. 4,130, 3,304, " 18⅝ | | 615 37 |
| " | 13. | " 25 do. 6,090, 4,872, " 19 | | 925 68 |
| " | 21. | " 25 do. 5,770, 4,616, " 19¼ | | 888 58 |
| " | 30. | " 21 do. 5,465, 4,372 " 19¼ | | 841 61 |
| Feb'y | 3. | " ½ bbl. sausage-skins | | 78 00 |
| " | 5. | " 10 hogs, 2,190, 1,752, *a* 19 | | 332 88 |
| " | 9. | " 25 do. 5,665, 4,532, " 19⅝ | | 895 00 |
| " | 15. | " 21 do. 4,620, 3,696, " 19 | | 702 24 |
| " | 23. | " 13 do. 3,460, 2,768, " 20½ | | 567 44 |
| | | | | $7,376 66 |
| Feb'y | 28. | To 33 hogs, 7,540, 6,032, *a* 20⅝ | | 1,259 18 |
| Mar. | 2. | " ½ bbl. sausage-skins | | 78 00 |
| " | 11. | " 25 hogs, 5,680, 4,544, *a* 20½ | | 931 62 |
| " | 20. | " 25 do. 5,815, 4,652, " 19¾ | | 918 75 |
| " | 27. | " 20 do. 3,425, 2,740, " 18 | | 493 20 |
| Ap'l | 1. | " 20 do. 3,800, 3,040, " 18½ | | 562 40 |
| " | 6. | " 20 do. 4,510, 3,608, " 19⅝ | | 712 58 |
| " | 13. | " 20 do. 4,610, 3,688, " 18⅝ | | 690 50 |
| " | 22. | " 25 do. 5,075, 4,060, " 17¾ | | 720 65 |

123 *John Fister in ac. with V. Willett & Co.*

CR.

| | | | | |
|---|---|---|---|---|
| 1865. | | | | |
| Jan'y | 12. | By cash, 349.00; 20, do. 371.51 | | 720 51 |
| " | 20. | " do. 403.50; 29, do. 249.85 | | 653 35 |
| " | 29. | " do. 525.15; 7 Feb'y, do. 90.22 | | 615 37 |
| Feb'y | 7. | " do. 809.78; 14, do. 116.00 | | 925 68 |
| " | 14. | " do. 519.10; 21, do. 369.48 | | 888 58 |
| " | 21. | " do. 325.52; 28, do. 516.09 | | 841 61 |
| " | 28. | " note 6 mo's from date for | | 1,000 00 |
| " | 28. | " cash | | 44 00 |
| " | " | " note 12 mo's from date for | | 1,000 00 |
| Mar. | 12. | " cash | | 687 56 |
| | | | | $7,37[illegible] 66 |
| Mar | 12. | By cash, 473.56; 21, do. 785.62 | | 1,259 18 |
| Mar. | 21. | By cash, 24.38; 29, do. 800.00; Ap'l 4, do. 107.24 | | 931 62 |
| Ap'l | 4. | " do. 392.76; 10, do. 526.00 | | 918 76 |

| | | | | |
|---|---|---|---|---|
| " | 10. | " | do. $50.00; 18, do. $443.20 | 493 20 |
| " | 18. | " | do. 119; 25, do. 443.40 | 562 40 |
| " | 25. | " | do. 245.60; 2d May, do. 467 | 712 58 |
| May | 2. | " | do. 153.02; 9, do. 520.00; 16, do. 17.48 | 690 50 |
| " | 16. | " | do. 641.52; by am't to folio 71, 79.13 | 720 65 |

124 *John Fister in ac. with V. Willett & Co.*

DR.

| | | | | |
|---|---|---|---|---|
| 1865. | | | | |
| Ap'l | | | To am't of bal. from folio 55 | 157 13 |
| " | 28. | " | 1 keg sausage-skins | 27 00 |
| " | 29. | " | 25 hogs, 4,775, 3,220, *a* 15¼ | 592 10 |
| May | 5. | " | 25 do. 5,050, 4,040, " 14⅞ | 600 95 |
| " | 13. | " | 25 do. 5,450, 4,360, " 15 | 654 00 |
| " | 19. | " | ½ bbl. sausage-skins | 75 00 |
| " | | " | 28 hogs, 6,600, 5,280, *a* 14⅜ | 759 00 |
| " | 26. | " | 28 do. 6,290, 5,032, " 13 | 654 16 |
| June | 4. | " | 25 do. 5,300, 4,240, " 12⅝ | 540 60 |
| " | 12. | " | 6 do. 1,600, 1,280, " 13 | 166 40 |
| " | 15. | " | 9 do. 1,925, 1,540, " 13¼ | 204 00 |
| " | 19. | " | 25 do. 5,500, 4,400, " 13⅜ | 588 50 |
| " | 27. | " | 28 do. 5,590, 4,472, " 13⅜ | 598 13 |
| July | 6. | " | 30 do. 6,150, 4,920, " 13⅜ | 658 00 |
| " | 14. | " | 20 do. 4,330, 3,462, " 14⅛ | 510 94 |
| " | 20. | " | 30 do. 5,100, 4,880, " 15⅜ | 750 30 |
| " | 21. | " | ½ bbl. sausage-skins | 68 00 |
| " | 29. | " | 27 hogs, 5,550, 4,440, 16½ | 722 25 |
| Aug. | 7. | " | 13 do. 2,825, 2,260, *a* 17 | 384 20 |
| " | 10. | " | 29 do. 6,080, 4,864, " " | 826 88 |
| " | 19. | " | 25 do. 5,490, 4,396, " 16½ | 725 33 |
| " | 27. | " | 30 do. 6,195, 4,956, " 16⅝ | 830 13 |
| | | | | 11,093 00 |

125 *John Fister in ac't with V. Willett & Co.*

CR.

| | | | | |
|---|---|---|---|---|
| 1865. | | | | |
| May | 25. | By | cash | 157 13 |
| " | " | " | do. | 27 00 |
| " | " | " | do. | 518 05 |
| June | 1. | " | do. $74; 8, do. 540; 15, 40.00 | 654 00 |
| " | " | " | cash | 600 95 |
| " | 15. | " | do. | 75 00 |
| " | 15. | " | do. 460; 22, do. 299.00 | 759 00 |
| " | 22. | " | do. 16.00; 29, do. 390; 6 July, do. 248.16 | 654 16 |
| July | 6. | " | do. 287.84; 13, do. 252.76 | 540 60 |
| " | 13. | " | cash | 166 40 |
| " | " | " | do. 18.84; 20, do. 185.16 | 204 00 |
| " | 20. | " | do. 350.84; 30, do. 237.66 | 588 50 |
| " | 30. | " | do. 435.34; Aug. 8, do. 162.79 | 598 13 |
| Aug. | 8. | " | do. 437.21; 20, do. 220.79 | 658 00 |
| " | 2. | " | cash | 510 94 |
| " | 21. | " | do. 343.27; 28, do. 407.03 | 750 30 |
| " | 28. | " | cash | 68 00 |
| " | " | " | do. 258; 4 Sept., do. 464.25 | 722 25 |
| Sept. | 4. | " | do. 235.25; 12, do. 148.45 | 384 20 |
| " | 12. | " | do. 491.55; 20, do. 335.33 | 826 80 |
| " | 20. | " | do. 308.67; Oct. 2, do. 416.66 | 725 33 |
| Oct. | 2. | " | do. 527.34; bal. to folio 92, 376.79 | 904 13 |
| | | | | $11,093 00 |

126 *John Fister in ac. with V. Willett & Co.*

DR.

| | | | |
|---|---|---|---|
| 1865. | | | |
| Sept. | | To bal. from folio 71 | 376 79 |
| " | 5. | " 25 hogs, 4,990, 3,992, *a* 17¾ | 708 58 |
| " | 12. | " 20 do. 4.600, 3,680, " 18 | 662 40 |
| " | 19. | " 31 do. 6,535, 5,228, " 18 | 941 00 |
| " | 30. | " 24 do. 5,175, 4,140, " 20 | 828 00 |
| Oct. | 6. | " 22 do. 5,185, 4,148, " 20½ | 834 78 |
| " | 18. | " 15 do. 3,125, 2,500, " 19¼ | 481 25 |
| " | 23. | " 15 do. 3,950, 3,160, " 19¼ | 608 30 |
| " | 31. | " 12 do. 3,160, 2,578, " 19 | 480 32 |
| Nov. | 7. | " 12 do. 3,550, 2,840, " 18⅞ | 536 00 |
| " | 9. | " 1 keg of sausage-skins | 23 00 |
| " | 13. | " 15 hogs, 3,550, 2,840, " 18 | 511 20 |
| | | | $6,961 62 |

CR.

| | | | |
|---|---|---|---|
| 1865. | | | |
| Oct. | 8. | By cash, J. P. W | 587 00 |
| " | 17. | " " to Clark | 685 00 |
| " | 26. | " " V. W | 480 00 |
| " | 30. | " " for proceeds of sale of stall | 1,500 00 |
| Nov. | 1. | " " | 608 30 |
| " | 7. | " " | 476 00 |
| " | 14. | " " | 500 00 |
| " | 21. | " " | 405 00 |
| | | " error in extension | 24 03 |
| Dec. | 14. | " note 4 mo's from this date for | 1,726 29 |
| | | | $6,991 62 |

127 *Decree.—Filed Mar.* 20, 1871.

In the supreme court of the District of Columbia, the 20th day of March, A. D. 1871, in equity.

JOHN FISTER *vs.* JAMES P. WILLETT ET AL. } No. 2215. Eq. doc.

This cause came on to be heard at this term, and was argued by counsel; and therefore, upon consideration thereof, it was ordered, adjudged, and decreed as follows, to wit:

That the payment of the $1,500, which the plaintiff alleges in his bill was omitted at the time the judgment was entered, and for which he has not received credit, be allowed, the same to be deducted from the sum for which judgment was entered.

That the deed executed by John Fister, dated May 29, 1867, conveying a certain lot or certain lots to V. Willett, be declared valid, and that the consideration-money of the said deed be fixed at $1,549.80.

That all partial payments and moneys arising from the sale of lots, which, by agreement of the parties, were to be applied towards the discharge of the judgment entered up against plaintiff, by Willitt & Co., on the 15th day of June, A. D. 1866, be applied according to the respective dates of such payments or sales: first to the payment of the accrued interest, and the balance in reduction of the principal sum.

That the plaintiff claim for a credit of $420, as the balance of an alleged payment of $800, be disallowed.

By the court:

MACARTHUR, *Justice.*

*Appeal to general term.*

JOHN FISTER
*vs.*
JAMES P. WILLETT ET AL. } 2215. Eq. doc., 10.

The clerk will please enter an appeal to the general term from the decree passed herein on the 20th instant.

REGINALD FENDALL,
*Solicitor for Def'ts.*

Mar. 20, 1871.

Appeal entered as per precipe.
By the clerk.

128 *Mem. of rulings by the court on the hearing.—Filed Mar.* 21, 1871.

FISTER
*vs.*
WILLETT ET AL. } 2215. Equity.

At the hearing of this cause, on motion of the def's solicitor, the dep osition of the plaintiff was ruled out, and not allowed to be read, and on motion of the pl'ff's solicitor, the deposition of J. F. Wollard, so far as the same related to a conversation alleged to have taken place between him and Voltaire Willett, deceased. And the defendants were allowed to introduce oral testimony to prove the handwriting of defendants' "Ex. D," and did prove said handwriting.

MACARTHUR, *Justice.*

*Order of reference.—Filed April* 5, 1871.

In the supreme court of the District of Columbia.

JOHN FISTER
*vs.*
JAMES P. WILLETT ET AL. } Equity.

And now, upon motion of John B. Adams, solicitor for plaintiff, it is ordered by the court, this fifth day of April, A. D. 1871, that this cause be referred to J. J. Johnson, esq., to state the account between the parties, and ascertain the indebtedness of plaintiff to defendants, under the decree of the court made the twentieth day of March, A. D. 1871, and report the same to the court.

By the court.

MACARTHUR, *Justice.*

129 *Appeal to general term from order of April 5th, 1871.*

In the supreme court of the District of Columbia.

JOHN FISTER, *vs.* JAMES P. WILLETT ET AL. } 2215. Equity.

The clerk will please enter an appeal to the general term from the decree or order passed herein on the 5th instant.
April 5th, 1871.

REGINALD FENDALL,
*Solicitor for Defendant.*

Appeal entered as directed in above precipe.
By the clerk.

130 *Report of special auditor.—Filed April 19, 1871.*

In the supreme court of the District of Columbia.

JOHN FISTER *vs.* JAMES P. WILLETT. } Equity.

The above cause was, on the fifth day of April, A. D. 1871, referred to me, to state the account between the parties, and ascertain the indebtedness of plaintiff to defendants, under the decree made the 20th of March, 1871. Schedule A, and hereto annexed, shows the account stated according to the judgment set forth the answers in the above-entitled cause. Schedule B, also annexed, shows the account stated in complainant's bill.

I have made examination, and from the records, and I find that the judgment mentioned in Schedule A was entered on the 15th of
121 June, 1866, as therein stated. But I find no judgment entered on that day corresponding to the one set forth in the bill as described in Schedule B.

JOHN J. JOHNSON,
*Special Auditor.*

SCHEDULE A.

*John Fister to Willetts.*

| | | | |
|---|---|---|---|
| 1866. | | | |
| June 15. | Judgment v. Fister for $8,000 damages; damages to be released upon the payment of $110 with interest from 23rd July, 1864, and $2,000, with interest from 12th November, 1864, and $2,000, with interest from 28 February, 1865, and $1,726.29, with interest from 14th December, 1865, and costs of suit. | | |
| | Principal | | $5,826 00 |
| | Interest on same to June 15th, 1866, when judgment was entered | | 401 58 |
| 132, 133 | 1864. | | |
| | As follows: | | |
| July 23. | To due-bill | | $110 00 |
| | Interest on same from 23d July, 1864, to June 15, 1866 | | 12 50 |
| Nov. 12. | To note at 6 months | | 1,000 00 |
| | Interest on same from 12 Nov., 1864, to 15 June, 1866 | | 90 00 |

| | | | |
|---|---|---|---|
| " " | To note at 12 months | 1 000 00 | |
| | Interest on same from 12 Nov., 1864, to June 15, 1866 | 90 00 | |
| 1865. | | | |
| Feb'y 28. | To note at 6 months | 1,000 00 | |
| | Interest on same from Feb'y 28 to June 15, 1866 | 78 00 | |
| " " | To note at 12 months | 1,000 00 | |
| | Interest on same from Feb. 28 to June 15, 1866 | 78 00 | |
| Dec. 14. | To note at 4 months | 1,726 29 | |
| | Interest on same from Dec. 14, 1865, to June 15, 1866 | 52 08 | |
| | | $6,237 87 | |
| 1866. | | | |
| June 15. | Credit on above judgment by decree | 1,500 00 | |
| | | | $4,737 87 |
| | Interest from 15 June, 1866, to June 7, 1867 | | 277 96 |
| 1867. | | | |
| | | | 5,015 83 |
| June 7. | Credit on judgment by sale of lots | | 2,691 09 |
| | | | $2,324 83 |
| | Interest from June 7, 1867, to March 20, 1871 | | 528 10 |
| 1868. | | | |
| Nov. 7. | Credit on judgment | 421 00 | |
| | Int. on same from Nov. 7, 1868, to March 20, 1871. | 33 68 | |
| | | | 454 68 |
| | | | $2,398 25 |
| 1871. | Costs of suit | | 16 43 |
| March 20. | Balance due | | $2,414 68 |

J. J. JOHNSON,
*Special Auditor.*

134 SCHEDULE B.

| | | | |
|---|---|---|---|
| 1866. | | | |
| June 15. | Judgment v. Fister | $6,226 00 | |
| " " | Credited by decree of court | 1,500 00 | |
| | | | $4,726 00 |
| | Interest from June 15, 1866, to June 7, 1867 | | 278 04 |
| | | | $5,004 04 |
| 1867. | | | |
| June 7. | Credit by sale of lots | | 2,691 00 |
| | | | $2,313 04 |
| | Int. from June 7, 1867, to Nov, 7, 1868 | | 220 33 |
| | | | $2,533 37 |
| 1868. | | | |
| Nov. 7. | Credit on judgment | | 421 00 |
| | | | $2,112 37 |
| | Int. from Nov. 7, 1868, to March 20, 1871 | | 300 25 |
| 1871. | | | |
| Mar. 20. | Balance due | | $2,412 62 |

J. J. JOHNSON,
*Special Auditor.*

135 Proceedings before the supreme court of the District of Columbia, in general term, commencing Monday, September 25, 1871.

MONDAY, *September* 25, 1871.

By order of the justices present, to wit, Chief Justice Cartter, and Justices Olin, Wylie, and MacArthur, the marshal proclaims the opening of the court.

SATURDAY, *November* 11, 1871.

Session resumed pursuant to adjournment.

Present, Chief Justice Cartter, and Justices Olin, Wylie, Humphreys, & MacArthur.

JOHN FISTER, COMP'L'T,
*vs.*
JAMES P. WILLETT, EX'R, ET AL., DEFT'S. } 2215. Eq.

This cause, coming on to be heard on the proceedings in the cause, and being argued by counsel and considered by the court, it is thereupon ordered, adjudged, and decreed that the decree of the court
136 below be, and the same is hereby, confirmed, with costs. From this decree the defendants, having prayed an appeal in open court to the Supreme Court of the United States, the said appeal is hereby allowed.

By order of the court.

137 In the supreme court of the district of Columbia, Saturday, the 17th day of November, 1871.

JOHN FISTER
*vs.*
JAMES P. WILLETT, ROBERT WILLETT, AND William E. Clarke. } No. 2215. Equity docket, 10.

Know all men by these presents that we James P. Willett and Robert Willett, executors of Voltaire Willett, and William E. Clarke, defendants, as principal, and William H. Ward, as surety, are bound unto the above-named John Fister, complainant, in the sum of five hundred dollars, to be paid to the said John Fister, complainant, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this seventeenth day of November, 1871.

Whereas the above-named James P. Willett and Robert Willett, executors of Voltaire Willett, & William E. Clarke, defendants, have prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named James P. Willett & Robert Willett, executors of Voltaire Willett, and William E. Clarke, defendants, shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES P. WILLETT. [L. S.]
ROBERT WILLETT. [L. S.]
W'M H. WARD. [L. S.]

Sealed and delivered in presence of—
R. J. MEIGS, *Clk.*

Approved:

D. K. CARTTER,
*Chief Justice.*

138 DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals, of which the foregoing writings are true and complete copies, are on file and of record in the clerk's office of said court, and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled: John Fister, compl't, vs. James P. Willett & Robert Willett, executors, and William E. Clarke, def'ts; No. 2215; equity; docket 10.

In testimony whereof I hereto subscribe my name and affix the seal of said court this 2d day of January, 1872.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 328. James P. Willett & Robert Willett, ex'rs of V. Willett, dec'd, and W. E. Clark, appellants, vs. John Fister. Dist. of Columbia sup. court. Filed 8 January, 1872.

REC. 328—5

O

# SUPREME COURT OF THE UNITED STATES.

## No. 121.

WILLETT'S EXECUTORS ET AL.

vs.

JOHN FISTER.

REGINALD FENDALL, being duly sworn, deposes and says that he was, from the beginning of this suit, and is still, one of the defendant's & appellant's attorneys, and shows that the record of appeal in this case is erroneous and deficient in the following particulars:

1. In omitting to embrace the power of attorney given by John Fister, 9 June, 1866, to confess judgment in favor of appellants; the judgment, the fi. fa. & return nulla bona; the release of lien of judgment on several lots of ground, and a credit of $421, entered of record in said suit.

2. In omitting to copy into the record Exhibit No. "A," J. A. C., reading:

"Received of Jno. Fister fifteen hundred dollars on account, which is not on his book, owing to his not having it along to-day.

"$1,500. V. WILLETT & CO."

3. In having erroneously copied into the record and printed as part of Exhibit B to Adeline Fister's testimony, which exhibit was a pass-book, and on page 23 sundry debits, under dates of Nov. 21, 28, Dec. 18, 27, 1865, and March 2, 1866, and sundry credits under dates of Dec. 1, 14, 1865, Jan'y 2, 12, 24, & 12 March, 1866, all of which entries belong to a private account of W'm E. Clark with John Fister, and which

2

*which* is entirely disconnected with this suit, and which is erroneously entered in the transcript and printed in the record as "John Fister in ac. with V. Willett & Co.," instead of "John Fister in account with W'm E. Clark."

4. And in omitting to copy into the record plaintiff's Exhibit "C," reading:

"October, 20, 1863. Received of John Fister eight hundred dollars on hog-account.

"W. E. CLARK."

And affiant further says that the documents thus omitted from the record were introduced in evidence in the lower court, & were used by both parties, plaintiff and defendant, in the trial & argument of the case, and are, in the opinion of affiant, indispensably necessary to the trial of the case on appeal; that the defects of the record herein

complained of were not known to affiant until after the record had been printed and placed in the hands of the senior counsel; and the motion for the certiorari herein is made at the earliest moment possible after discovery of the errors, tho' not at the first term of the entry of the cause.

To avoid a certiorari, it is hereby agreed that the items *that the items* 1, 2, and 4, in pro-forma affidavit, be copied and printed as part of the record, with leave to either party to use in the Supreme Court the original receipt No. 2, and that the item No. 3 be erased from the record.

BAINBRIDGE H. WEBB,
*Solicitor for Def't in Error.*
THOMAS J. DURANT,
*For Pl'ff in Error.*
THOMAS J. DURANT,
*For Pl'ff in Error.*
C. INGLE,
*Sol'rs for Compl't & Appellee.*

(Indorsed:) No. 121. U. S. Supreme Court. Willett's ex'rs et al. vs. John Fister. Affidavit for certiorari.

3 *Declaration.—Filed June 15th, 1866.*

In the supreme court of the District of Columbia the 7th day of June, 1866.

VOLTAIRE WILLETT & WILLIAM E. CLARK, TRADING AS V. WILLETT & CO. } At law. No.

The plaintiff sues the defendant for this, the defendant, by a certain paper-writing commonly called a "due-bill," on the 23d day of July, A. D. 1864, promised to pay to the
$110 plaintiffs one hundred and ten dollars, but did not pay the same; and further, for that the defendant, on the 12th day of November, 1864, by his promissory note, now over-
$1,000 due, promised to pay to the plaintiffs one thousand dollars, with interest, six months after date, but did not pay the same; and further, for that the defendant, on the 12th day of November, 1864, by his promissory note, now overdue,
$1,000 promised to pay to the plaintiffs one thousand dollars, with interest, twelve months after date, but did not pay
4 the same; and further, for that the defendant, on the 28th day of February, 1865, by his promissory
$1,000 note, now overdue, promised to pay to the plaintiffs one thousand dollars, with interest, six months after date, but did not pay the same; and further, the defendant, on the 28th day of February, 1865, by his promissory note,
$1,000 now overdue, promised to pay to the plaintiffs one thousand dollars, with interest, twelve months after date, but did not pay the same; and further, for that the defendant, on the 14th day of December, 1865, by his promissory note,
$1,726.29 now overdue, promised to pay to the plaintiffs seventeen hundred and twenty-six dollars and twenty-nine cents, with interest, four months after date, but did not pay the same, to the damage of the plaintiffs in the sum of eight thousand dollars.

BRADLEY & BRADLEY,
*Att'ys for Pl'ff.*

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof; otherwise judgment.

B. & B.

5 Due V. Willett & Co. one hundred and ten dollars, as balance on two notes taken up this day.

$110.] JOHN FISTER.

23 JULY, 1864.

[10-cent stamp, cancelled.]

$1,000.] WASHINGTON, 28 *Feb'y*, 1865.

Twelve months after date I promise to pay to the order of V. Willett & Co. one thousand $\frac{}{100}$ dollars, for value received, with int.

JOHN FISTER.

[50-cent stamp, cancelled.]

$1,726 $\frac{29}{100}$] WASHINGTON CITY, 14 *Dec.*, 1865.

Four months after date I promise to pay to the order of V. Willett & Co. seventeen hundred twenty-six $\frac{29}{100}$ dollars, for value received, with int.

JOHN FISTER.

[90-cent stamp, cancelled.]

6 $1,000.] WASHINGTON, *Nov.*, 12, 1864.

Six months after date I promise to pay to the order of V. Willett & Co. one thousand $\frac{}{100}$ dollars, for value received, with int.

JOHN FISTER.

[50-cent rev. stamp, cancelled.]

$1,000.) WASHINGTON, 12 *Nov.*, 1864.

Twelve months after date I promise to pay to the order of V. Willett & Co. one thousand $\frac{}{100}$ dollars, for value received, with interest.

JOHN FISTER.

[50-cent stamp, cancelled.]

$1.000.] WASHINGTON, 28 *Feb'y*, 1865.

Six months after date I promise to pay to the order of V. Willett & Co. one thousand $\frac{}{100}$ dollars, for value received, with interest.

JOHN FISTER.

[50-cent stamp, cancelled.]

7 VOLTAIRE WILLETT & WILLIAM E. Clark
*vs.*
JOHN FISTER.

To Walter S. Cox, esq., or any other attorney of the supreme court, D. C.:

SIR: You are hereby authorized to docket a suit entitled as above in the supreme court of the District of Columbia, and to confess judgment therein at the present May term, 1866, upon the within declaration, for $8,000 damages, damages to be released upon the payment of one hun-

dred and ten dollars, with interest from the 23 day of July, 1864; and two thousand dollars, with interest from the 12th day of November, 1864; and two thousand dollars, with interest from the 28th day of February, 1865; and seventeen hundred and twenty-six dollars and twenty-nine cents, with interest from the 14th day of December, 1865; and
8 the costs of these proceedings, and for so doing this shall be your sufficient authority.

JOHN FISTER.

WASHINGTON, *June* 9, 1866.

Proceedings before the supreme court of the District of Columbia, holding a special term, or circuit court for said district, commencing the third Monday, 21st day of May, 1866, in pursuance of rule of court.

MONDAY, *May 21st*, 1866.

The court commences its session at ten o'clock, a. m., Justice Olin, presiding.

FRIDAY, *June 15th*, 1866.

The court resumes its session, according to adjournment, Justice Olin, presiding.

9 VOLTAIRE WILLETT & WILLIAM E. CLARK, pl'f's, *vs.* JOHN FISTER, DEFENDANT. } 2676. Law.

The plaintiffs, by their attorneys, Messrs. Bradley, come and pray judgment of their demand against the defendant, who, by his attorney at law and in fact, Walter S. Cox, esq'r, comes and says he cannot deny but that the plaintiffs are entitled to recover against him in this action eight thousand dollars damages, damages to be released upon the payment of one hundred and ten dollars, with interest from the 23d day of July, 1864; and two thousand dollars, with interest from the 12th day of November, 1864; and two thousand dollars, with interest from the 28th day of February, 1865; and seventeen hundred and twenty-six dollars and twenty-nine cents, with interest from the 14th day of December, 1865; and the costs of these proceedings. Therefore it is considered that the plaintiffs recover against the defendant said damages of
10 eight thousand dollars, to be released upon payment of the several sums with interest in manner and form aforesaid confessed, and $14.73 for their costs of suit, and that they have execution therefor.

*Order for fi. fa.—Filed Sept.* 7, 1866.

V. WILLETT & Co. *vs.* JOHN FISTER. } No. 2676. At law.

Issue fi. fa. in above.

BRADLEY & BRADLEY,
*For Pl'ff.*

*Fi. fa.—Issued Sept.* 7, 1866.

It the supreme court of the District of Columbia, the 7th day of Sept., 1866.

VOLTAIRE WILLETT & W'M E. CLARKE, PLAINTIFFS, *vs.* JOHN FISTER, DEFENDANT. } At law. No. 2676.

The President of the United States marshal for said district greeting:

You are hereby commanded that of the goods and chattels, lands, and tenements of the defendant, you cause to be made $8,000, which the plaintiff lately in said court, in said suit, recovered of said defendant for his damages, and the further sum of $14.73 for his costs and charges by him about his suit expended, as appears of record, and return this writ into the clerk's office of said court within 60 days from the date hereof, so indorsed as to show when and how you have executed the same.

11

Witness: D. K. Cartter, chief justice of said court.

B. & B. R. J. MEIGS, *Clerk.*

(Endorsed;) Damages, $8,000.00; cost, 14.73; ad'l cost, 1.70. Damages to be released on pay't of $5,826.29, with int. on $100 from 23 July, 1864; on $2,000 *for* 12th Nov., 1864; on $2,000 from 18 Feb'y, 1865; & on $1,726.29 from 14 Dec'r, 1865, till paid.

*Marshal's return.*

"Nulla bona.

"D. S. GOODING,
"*Marshal.*

"NOV'R 7TH, 1866."

12 *Judgment.—Filed 6th June,* 1867.

WILLETT & CLARK *vs.* JOHN FISTER. } 2676. At law.

The clerk will enter the release of lots 15, 16, 17, sq'r 37, from the operation of this judgment.

V. WILLETT,
*For Willett & Clark.*

[Filed June 7, 1867.]

WILLETT & CLARK *vs.* JOHN FISTER. } At law. No. 2676.

The clerk will enter a credit of twenty-six hundred and ninety-one dollars on the judgment in the above case. $2,691.

V. WILLETT & W'M E. CLARK.

7 JUNE, 1867.

13 *Exhibit No. A, J. O. C.*

Received of Jno. Fister, fifteen hundred dollars, on ac't, which is not on his book, owing to his not having it along to-day.
$1,500.] V. WILLETT & CO.

*Exhibit "C," J. O. C.*

OCT. 20TH, 1863.

Received of Jno. Fister eight hundred dollars on hog-account.
W. E. CLARK.

DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of said District, do hereby certify, that the foregoing 11 pages of writing are true copies from the originals on file and of record in the clerk's office of said court, and said originals constitute the papers referred to in the annexed pro-forma affidavit as items 1, 2, and 4.

14 Witness my hand and the seal of said court this 30th of October, 1873.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 121. James P. & Robert Willett, exor's of V. Willett, dec'd, & W. E. Clarke, appellants, vs. John Fister. Addition to record & agreement of counsel. Filed 31 October, 1873.

IN THE

# Supreme Court of the United States.

WILLETT'S EXECUTORS
*vs.*
JOHN FISTER.

**Appeal from Supreme Court of the District of Columbia.**

*Brief for Defendants and Appellants.*

This is an appeal from a decree on a bill in equity filed by *John Fister* in the court below, praying, *inter alia*, that a judgment confessed by him might be set aside, and that he might have the benefit of a credit of $1,500, on the allegation that "on 15th June, 1866, the plaintiff was induced by " *V. Willett, deceased*, and *William E. Clark*, to confess " judgment to them for $6,226, which, they alleged, was the " balance due them from plaintiff; but plaintiff, who is *an* " *ignorant man, scarcely able to write his name*, subsequently " discovered that the said *Willett and Clark* had not given " him credit for a payment of $1,500, made some months be- " fore the confession of judgment aforesaid, and for which

" payment plaintiff had and still has a receipt signed by *Wil-*
" *lett & Clark.*"

The bill was filed December 15, 1870. (Rec., p. 1.) The answer to this allegation, both by defendant Clark and the executors of Willett, gives full details of the transactions between Fister and V. Willett & Co.; avers that Fister made but one payment to them of $1,500; denies that he has a receipt for $1,500, for which he has not already received credit; avers that the judgment was properly entered for the amount due and no more, " and that all the credits to which plaintiff " was entitled were allowed him; and that the plaintiff at that " time well understood the same, and was perfectly satisfied " with said settlement."

See Rec., p. 6.

HISTORY OF THE CASE.

John Fister, the complainant, was a butcher, and had a stall in market where he sold pork. He bought his hogs of V. Willett & Co., and there was a pass-book held by the complainant in which all the debits and credits were entered of the transactions between the parties; the *original entries* being made on the commercial books of V. Willett & Co. On complainant's pass-book, under date of 21st November, 1865, is the following entry:

" By cash on 30th Oct., $1,500."

Rec., p. 22.

And on V. Willett & Co's books:

" 1865, Oct. 30. By cash for proceeds of stall, $1,500."

Rec., p. 48.

The account on the pass-book, as well as the account on the defendants' books, were all closed on December 14, 1865, "by "a note at four months from this date for $1,726.69."

Rec., p. 23, at top.
Rec., p. 48, in middle of page.

And the pass-book and defendants' commercial books were all in the handwriting of V. Willett, who died in 1869.

The complainant now claims that he holds a receipt for $1,500, written by V. Willett and signed V. Willett & Co., *without any date;* which is for another and additional sum of $1,500, and which was paid in April, 1865.

This is the only question of fact in the case. Does the receipt *without date* refer to the transaction of 30th October, 1865, or to another amount of $1,500 alleged to have been paid in April, 1865?

The court sustained the complainant's pretensions to credit for two sums of $1,500, and defendants have appealed.

ASSIGNMENT OF ERRORS.

1st. The court erred in admitting the evidence of Mrs. Adeline Fister, wife of complainant.

2d. The court erred in concluding from the evidence that the payment of $1,500, alleged in plaintiff's bill, was omitted at the time the judgment was entered, and that he had not received credit therefor, and in decreeing the same to be deducted from the sum for which judgment was entered.

3d. The court erred in sustaining this suit.

If Mrs. Fister's evidence is ruled out, there is nothing whatever to sustain the judgment of the lower court. Mrs. Fister is the wife of complainant. Under the act of 2d July, 1864, (13 S. L., 351,) and the amendment, act of March 3, 1865, (13 S. L., 533,) neither party can testify, in actions against executors, &c., against each other "as to any transaction with, or "statement by the testator, &c., unless called to testify thereto "by the opposite party, or required to testify thereto by the "court." In the present case, the court excluded the testimony of the complainant, but admitted that of his wife. This was clearly an error.

These acts of Congress did not intend, we submit, to repeal the antecedent rule of law which provided that the husband should not be a witness for or against his wife; or the wife for or against her husband; because—

*First.* Husband and wife are not mentioned in the acts;

*Second.* No design can be imputed to Congress of interfering in any way to disturb the existing family relations and the State laws bearing thereon, known as the institute of family law;

*Third.* "Husband and wife cannot be witnesses *for* each "other, for their interests are identical; nor *against* each other "on grounds of public policy, for fear of creating distrust "and sowing dissensions between them, *and occasioning per-* "*jury.*"

2 Starkey, *400.

[There is another act of Congress of July 2, 1864, (13 S. L., 374,) "*relating to the law of evidence in the District of*

" *Columbia*," the proviso to which greatly strengthens the present statement of the law of this case.]

An examination of the case, on the merits, will add much force to this legal view of the incompetency of the wife; for the case itself is a type of a whole class of cases familiar to every lawyer and judge in the country. An attempt is made to set aside a confessed judgment on the ground that the party is "*an ignorant man, hardly able to write his name*," and was "*induced*" by his creditors to confess it for an amount $1,500 in excess of what was really due. Here, the allegation is one of *error* only, found in the second paragraph of the bill; but it is combined with other allegations intimating breach of trust, fraud, and refusal to account, which, though found by the lower court in favor of the defendants, seem to have unfavorably impressed that tribunal as to the real merits of the case.

The receipt which is the foundation of the suit was written by the deceased Willett, is apparently without date, and reads as follows, (Sup. Rec., p. 6, at top:)

"Received of John Fister fifteen hundred dollars on ac-
" count, which is not on his book owing to his not having it
" along to-day.

"V. WILLETT & CO."

Mrs. Fister's account of the matter is, in short, as follows:
" I got that receipt in April, 1865. I know it was then, be-
" cause I was cleaning some shad and wanted some change,
" and I went up to where his (*complainant's*) jacket was hang-
" ing on the sideboard and run one of my hands down one of
" his pockets to see if there was any money in it. I pulled out
" this paper. I then called in my daughter, Maria, and she
" read it. * * * After she read it, I carelessly threw it
" in the drawer, and didn't think anything more about it

" for some time. I looked at it again afterwards, and put it " in an old book which Mr. Willett had laid aside, and did not " take it out again until a year subsequent. I some time af- " terwards spoke to Mr. Wm. Fendall about it, but did not " show it to him. He said he did not want to see it, but told " me to take care of it. This was at my house. It must have " been in 1867. *I never showed it (the receipt) to him (her " husband.) He never saw it. I did not think it was " anything of any account. I merely laid it aside. I did " not know exactly what it was for.* Mr. Willett died in " 1869 and I found it in 1865. I cannot say for what that re- " ceipt was given. It might have been given for the $1,500 " or it might not, that I sent my husband with. *I can only " swear as to the time I got the receipt.*" " I had often sent " Mr. Willett a roll of money of $1,500 or $2,000 at a time. " The way (he) did not have it on the books is this: This " $1,500 or $2,000 was in payment, perhaps, of two or three " lots of hogs, and I got credit on the books for each lot of " hogs separately."

Q. " Did you ever pay him as much as $2,000 in one day ?"

A. " I don't know as I paid him $2,000, but I know I paid " him $1,700 in one day, and I paid large amounts at other " times. I remember that in January or February, 1865, I " sent him $1,500. My husband was going down, and having " worried me a great deal about the book, not being able to " find it, I said, I wish to heaven you and Mr. Willett would " settle your business together and not trouble me. I wrapped " up one roll of $600 with red string, and I took a piece of " flannel and tied up another bundle of $900 with it. He put " the $600 into his side-pocket, and the other bundle of $900 " into his pantaloons pocket."

Look at this testimony in any light, and we find it by no means amounting to that proof of error or mistake which the

law requires. The entire case has been built upon the accidental finding of the receipt of defendants, without date attached to it. The witness admits that she never showed her husband the receipt; and no knowledge of this additional credit was brought to the notice of the person chiefly interested, *in his lifetime*. Nothing was done from April, 1865, to 15th December, 1870. The testimony is neither grave, precise, nor concordant. It leaves unexplained why the witness acted as she did; she brings forward her daughter to affirm to what she considers the material part of her story, *the finding of the receipt in shad time*, but she will not even swear that the receipt was "given for the $1,500 that I sent "my husband with. I can only swear as to the time when I "got the receipt." But the question is not, when the receipt was given, but have defendants failed to give credit for $1,500 in their account with plaintiff? Of this fact, a vague suspicion merely is created in the mind, by the testimony of defendant's wife and daughter, not altogether free from a presumption of influence and combination. Fortunately for the defendants, other evidence in the case puts this suspicion out of the case, and renders it harmless.

The evidence shows but *one* receipt, and that was for $1,500, and given 30th October, 1865, for proceeds of sale of stall, and made necessary by the defendant's failure to have his pass-book with him.

And the pass-book itself is a silent but very eloquent witness in behalf of the deceased Willett; for it shows the whole course of business between these parties, and is in exact agreement with Fister's account on the commercial books of V. Willett & Co. If we take the various sums total of cash paid by Fister from January to November, 1865, we find that, were we to add $1,500 to the amount paid in any one month, we would have a much larger sum than was ever paid in the same

time; and it would make so large a payment as to require *something outside of the business* to be converted into money and go into the defendants' hands, in order to account for it. For example, the cash receipts of—

| | |
|---|---|
| January, 1865, were | $2,610 48 |
| February | 2,655 91 |
| March | 2,771 12 |
| April | 2,327 00 |
| May | 2,501 00 |
| June | 2,520 00 |
| July | 2,183 00 |
| August | 2,408 00 |
| September | 1,984 00 |
| October | 2,696 00 |
| November | 1,989 30 |

Here we find a most forcible presumption in favor of the defendants, with all the elements of first-rate evidence; precise to a cent, grave to conviction, concordant with all arithmetical processes. In what month could a payment of $1,500 be introduced over and beyond the regular course of business, without clear proof of the source from which the money flowed? The books are positive that there was but one payment of $1,500 ever made. There is but one receipt for $1,500. The circumstances under which this payment was made and receipt given were very peculiar. They are fully proved by the witness, William E. Clark, and free the case from all kind of doubt. In addition, the pass-book is Fister's own book; kept under his own eye; which he is bound to keep correctly; which is his own evidence; and which, under the circumstances of the case, he should not be allowed to vary or add to, after so long a delay, and when one of the principal parties in interest is deceased.

Other objections were made to the accuracy of defendants'

accounts, but they were all declared unfounded by the lower court, and need not be further noticed here. The correctness of Mr. Willett in all other respects is another strong corroboration likewise of his correctness in this item of $1,500.

But though we have considered it our duty to assume and prove what would be sufficient in law to enable V. Willett & Co. to recover from Fister, in a direct action, the entire amount of their claim without giving credit for the $1,500 claimed in the bill and attempted to be proved by Fister's wife, yet this has been done rather to show the good faith, honest dealing, and integrity of Voltaire Willett than the utterly baseless nature of plaintiff's claim. It will, besides, conduce to a better understanding of the important point of the competency of the wife in favor of her husband, raised by the first assignment of error, by showing the real character of this relation.

In law, the *onus probandi* to prove payment and error is on him alleging them. It would be trifling with the court to say more on this point, in view of what precedes herein.

But assuming *argumenti gratiâ* that $1,500 was really paid and not credited; that Willett did receive the $1,500 and gave no account of it, and converted it to his own use, thereby defrauding his own commercial partner as well as Fister; still it might be plausibly argued that Fister should not succeed in this action.

For his wife, evidently his *alter ego*, knew there was an error in the account in 1865, and never mentioned it from that time to the institution of this suit, December 15, 1870.

This knowledge was Fister's knowledge. With this knowledge, he confesses judgment; submits to a *fi. fa.*, which is returned *nulla bona;* deeds away large lots of real estate to V. Willett and other persons in payment of this judgment and never says a word of this alleged error of fact, a missing credit

of $1,500, *until after Willett's death.* It would be inequitable, after this lapse of time, to permit him now to aver a different state of things. He has acquiesced in and approved and ratified the error. When his wife discovered it, he did not stop and require its correction, or say a word about it. *He paid voluntarily, and under no error of law.* He must not be permitted to gain by a mistake, and be in a better situation than if the mistake had not happened. Death has stricken the instruments of defence from the defendants' hands and silenced their most important witness. To permit the plaintiff to recover would not only violate equity, which requires each party to show himself ready, desirous, prompt, and eager; but would reward collusion; encourage perjury; disturb the marital relation; tend to presume fraud without proof; to encourage litigation, ignorance, and suspicion; and sully the sanctity of judicial proceedings.

We pray that the decree appealed from be set aside, and complainant's bill be dismissed with costs in both courts.

REGINALD FENDALL,
DURANT & HORNOR,
*for Appellants.*

WASHINGTON, D. C., *April* 25, 1873.

# Supreme Court of the U. S.

VOLTAIRE WILLETT'S EX'ORS AND WILLIAM E. CLARK, *surviving partner of* V. WILLETT & Co., *appellants*,
v.
JOHN FISTER, *appellee*.
} No. 121.

BRIEF FOR APPELLEE.

The case, as now here, presents but a single question for the consideration of the court; and that is the question of *fact*, does the *preponderance of evidence* establish the validity of Fister's claim to a credit of $1,500, on the judgment confessed by him in favor of Willett & Co.?

I.

*The Evidence.*

Adeline Fister, the wife of complainant, states that in April, 1865, she found in her husband's pocket a receipt of Mr. Willett's, which Maria Clements, at her request, read to her; she, (the witness,) not being able to read. (Rec. pp. 13, 14, 15, 16, 30.) She identifies the paper, shown her, as that receipt. (Rec. p. 14.) She accounts satisfactorily for the fact that this unusually large sum was paid at that time. (Rec. p. 30.)

*Maria Clements* corroborates Mrs. Fister fully and particularly; and testifies that *in the spring* of 1865, she saw the receipt of Mr. Willett, for $1,500. She recognizes it as the paper handed her, marked "Ex. A." (Rec. pp. 27, 28.)

*Both complainant's pass-book* (complt's "Ex B," Rec. pp. 17, *et seqq.*,) and *defendant's ledger* (deft's "Ex. C," Rec. pp. 45, *et seqq.*,) show that this credit of $1,500, was never entered. The only $1,500 credit in the whole account is of date October 30, 1865. (Complt's "Ex B," Rec. p. 22.)

Deft's "Ex. (C," Rec. p. 48;) and the testimony of *Louisa Yeabower* (Rec. pp. 28, 29,) and that of defendant, Clark, himself, (Rec. p. 42,) as well as the entry in defendant's ledger, (Rec. p. 48,) show that this was not the same payment testified to by Mrs. Fister, (Rec. pp. 16, 30,) and that it was derived from a different source, namely, from proceeds of sale of Fister's stall in the market.

II.

*The Law.*

It is contended by appellants that the evidence of Adeline Fister, wife of appellee, was improperly admitted by the court below.

The act of Congress, on which they rely, "relating to the law of evidence in the District of Columbia," (13 Stat., 374,) is a local law, which the court below, following all its own precedents, unanimously construed in favor of the plaintiff in this cause. The proviso, so far from sustaining their view of the law of this case, effectually precludes it.

C. INGLE,
BAINBRIDGE H. WEBB,
*for Appellees.*

# Supreme Court of the U. S.

VOLTAIRE WILLETT'S EX'ORS AND WILLIAM E. CLARK, *surviving partner of* V. WILLETT & Co., *appellants*,
v.
JOHN FISTER, *appellee*.
No. 121.

SUPPLEMENTAL BRIEF FOR APPELLEE.

The case, as now here, presents but a single question for the consideration of the court; and that is the question of *fact*, does the *preponderance of evidence* establish the validity of Fister's claim to a credit of $1,500, on the judgment confessed by him in favor of Willett & Co.?

## I.

### *The Evidence.*

*Adeline Fister*, the wife of complainant, states that in April, 1865, she found in her husband's pocket a receipt of Mr. Willett's, which Maria Clements, at her request, read to her; she, (the witness,) not being able to read. (Rec. pp. 13, 14, 15, 16, 30.) She identifies the paper, shown her, as that receipt. (Rec. p. 14.;) Supplemental Record, p. 6.) She accounts, satisfactorily for the fact, that this unusually large sum was paid in January or February, 1865. (Rec. p. 30.)

*Maria Clements* corroborates Mrs. Fister, fully and particularly; and testifies that *in the spring* of 1865, she saw the receipt of Mr. Willett for $1,500. She recognizes it as the paper handed her, marked "Ex. A." (Rec. pp. 27, 28. Supplemental Record, p. 6.)

*Both complainant's pass-book* (complt's "Ex B," Rec. pp. 17, *et seqq.*,) and *defendant's ledger* (deft's "Ex. C," Rec. pp. 45, *et seqq.*,) show that this credit of $1,500, was never entered. The only $1,500 credit in the whole account is of date *October* 30, 1865. (Complt's "Ex. B," Rec. p. 22; deft's "Ex. C," Rec. p. 48.)

And the testimony of *Louisa Yeabower*, (Rec. pp. 28, 29,) and that of defendant, Clark, himself, (Rec. p. 42,) as well as the entry in defendant's ledger, (Rec. p. 48,) show that this was not the same payment testified to by Mrs. Fister, (Rec. pp. 16, 30,) and that it was derived from a different source, namely, from proceeds of sale of Fister's stall in the market, subsequently.

Mrs. *Yeabower's* testimony, (Rec. pp. 28, 29,) is clearly disinterested, and unquestainably competent.

The defendant, *Clarke*, in his deposition, (Rec. pp. 42, 43,) the only witness for himself, fails to contradict the witnesses for complainant, in a single point. Furthermore, when asked whether or not Fisher ever made any payment, other than the payment of $1,500 to Willet, "in the fall of 1865," he evades the questions, and answers that Fister never paid *him* $1,500 *afterwards*,

Now, in the first place, nobody contends that Fister, or anybody for him, ever paid Clark anything. The accounts between Fister and wife and Willet & Co., were kept "*by Mr. Willett*," as Clark says in his next answer.

*Secondly*, nobody contends that the Fisters ever paid

Willett & Co. $1,500 "afterwards," that is, after "the fall of 1865.

The whole of Clarke's testimony on the only point now in issue is, like the whole of that of Willet's executors, in answer, on information and belief.

The brief for respondents and appellants, although dated April 25, 1873, was not filed until November, 1873.

---

*Their Statement of the Evidence.*

They admit that the testimony of *Mrs. Yeabower*, and of their own witness, Clark, (a party to the record and a party interested in the issue,) touching the only matter now in controversy, is unassailed and unassailable.

But they cite what they claim to be a substantial statement of Mrs. Fister's testimony, (Appellant's Brief, p. 5.) Upon that statement, *mainly taken from her evidence on cross-examination*, and enclosed in quotation marks by the printer's devil, they ask the court to reverse the court below.

That statement is [redacted], *and is controverted.* So much of Mrs. Fister's evidence, as is relied on by appellants in their brief, (p. 7) was drawn out *on cross-examination*, and not volunteered, as insinuated.

II.

*The Law.*

1. It is contended by appellants that the evidence of Adeline Fister, wife of appellee, was improperly admitted by the court below.

The act of Congress, on which they rely, "relating to the law of evidence in the District of Columbia," (13

Stat., 374,) is a local law, which the court below, following all its own precedents, unanimously construed in favor of the plaintiff in this cause: The *proviso*, so far from sustaining their view of the law of this case, effectually precludes it.

2. The complainant, Fister, was completely under the power and control of the actual defendant, V. Willett, and trusted him implicitly. (Rec. pp. 1, 17, 30, 11, 27, 30, 43, 44; Ex. "C. J. O. C." Supplemental Rec. p. 6.)

The decree below, based upon the Master's report, (Record, p. 51,) shows that, at any rate, complainant will lose interest on the credit allowed him.

C. INGLE,
BAINBRIDGE H. WEBB,
*for Appellees.*